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8 Attorneys for Petitioning Creditors

9 **UNITED STATES BANKRUPTCY COURT**  
10 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11 In Re:

12 FRANCIS J. LOPEZ,  
13 Alleged Debtor.

Case No. 05-05926-PBINV

**REPLY TO OPPOSITION TO MOTION  
FOR AN ENFORCEMENT  
ORDER IMPOSING MONETARY  
SANCTIONS AGAINST THE DEBTOR**

**[BIFURCATED PHASE II]**

Date: November 19, 2007  
Time: 2:00 p.m.  
Judge: The Honorable Peter W. Bowie  
Cttrn: 4

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19 Petitioning Creditors respectfully submit the following Reply to the "Opposition of Alleged  
20 Debtor to Motion for Sanctions" filed by Francis J. Lopez ("Lopez"), the Alleged Debtor herein.

21 **I. INTRODUCTION**

22 Lopez's Opposition spins a dramatic tale "*full of sound and fury, signifying nothing*".<sup>1</sup> He  
23 complains bitterly about the expense, inconvenience and "travel headaches" he has suffered as a  
24 result of this case, but he never proffers a legitimate excuse for the unreasonable delays and other  
25 misconduct that gave rise to this Motion or those that came before it. In sum, he fails to provide  
26 the Court with any good or legally cognizable reason why the Motion should be denied.

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<sup>1</sup> William Shakespeare, *Macbeth*, Act V, scene 5.

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Discovery rights become meaningless unless they are met with either good faith and timely compliance, or a response from the court that will serve as a robust deterrent to scofflaws that do more to probe the limits of the court's sufferance than to discharge their duties as a litigant. Lopez's conduct in this case has shown him to be of that ilk, he is without excuse, and the Motion should be granted in its entirety.

## II. DISCUSSION

### A. **Lopez's Claimed Scheduling Dilemmas Do Not Justify His Failure to Give Reasonable Notice of his "Inability" to Appear for his Noticed Deposition**

Lopez attempts to justify his *last minute*, unilateral cancellation of his deposition (noticed for September 11, 2007) by claiming that his business and travel schedule prevented him from committing to traveling to San Diego for the deposition. A more disingenuous example of meritless excuse-mongering is difficult to imagine. Since June 25, 2007, Lopez has known that his deposition would be taken here in San Diego.<sup>2</sup> Three days later, he agreed through his counsel to be deposed on either July 20 or 27, 2007.<sup>3</sup> Twenty-two days later, in the evening (PDT) of July 20, 2007, he disavowed that commitment without explanation.<sup>4</sup> At the same time, he insincerely suggested sitting for the deposition on July 31, 2007, knowing that was the last day before Petitioning Creditors' counsel would be leaving the district for a one-month absence, and hence would be unlikely to be able to accept the invitation.<sup>5</sup>

On July 31, 2007, Petitioning Creditors' counsel reported these events to the Court in open session, and further disclosed that the Lopez Deposition was scheduled for September 11, 2007, here in San Diego.<sup>6</sup> That provided Lopez with 42 days prior notice of his obligation to be here in San Diego ready to testify on September 11, 2007.

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<sup>2</sup> See the "Declaration of L. Scott Keehn, Etc." dated October 19, 2007, filed as attachment 2 to Docket Item 114 ("LSK Decl" at ¶5).

<sup>3</sup> *Id.* at ¶6.

<sup>4</sup> *Id.* at ¶7.

<sup>5</sup> *Id.* at ¶5 and ¶8.

<sup>6</sup> *Id.* at ¶9.

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1 No objection to that date, time, or location was ever filed. So, whatever Lopez did or  
 2 failed to do in the days and weeks that followed was a course of conduct that he chose and bears  
 3 full responsibility for. If he was so dilatory in making his travel arrangements that when he finally  
 4 got around to it the task was genuinely impossible, that is nothing more than the foreseeable  
 5 consequence of his own choices. It neither justifies nor excuses his failure to appear — either in  
 6 July as originally promised, or on September 11, 2007.

7 Common experience tells us that 42 days is an adequate period of advance notice for  
 8 purposes of booking travel arrangements from the State of Florida to San Diego, California. The  
 9 Lopez Declaration provides no explanation as to why he was unable to perform that task.

10 Of equal significance is Lopez's failure to explain why Petitioning Creditors were not  
 11 advised of any of this — e.g., during the "first week of September" — the week Lopez admits that  
 12 his business and travel "arrangements were finalized."

13 It was not until the afternoon of September 10, 2007 — less than 24 hours before the  
 14 deposition was scheduled to begin — that Lopez's attorney sent Petitioning Creditors' attorney, L.  
 15 Scott Keehn, a brief email stating that Lopez was "*unable to make travel arrangements for the*  
 16 *deposition tomorrow.*" The e-mail then suggested October 8, 2007, or October 22, 2007, as  
 17 possible dates for the deposition.

18 The timing of that notice appears to have been deliberately calculated to insure that  
 19 maximum time would be expended to prepare for a deposition that Lopez knew would not take  
 20 place. It is inconceivable that Lopez had no clue that he would be *unable to make travel*  
 21 *arrangements* until a point in time less than 24 hours prior to his scheduled deposition.

22 An additional, and more pragmatic, problem with that *eleventh hour* email was that by the  
 23 time it was sent, Mr. Keehn and his paralegal had spent a total of 7.7 hours preparing documents  
 24 and deposition questions, and much of that same field would have to be re-plowed six weeks later  
 25 when the deposition finally took place. If Lopez had even made one simple phone call, earlier in  
 26 the the first week of September, to advise that he may not be able to make the necessary travel  
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28 <sup>7</sup> See, Declaration of Francis Lopez, page 3, line 20.

1 arrangements to appear for his deposition, then those 7.7. hours of preparation would not have  
 2 been spent, and Petitioning Creditors would not have incurred the \$2,164.50 in fees for that time.

3 Lopez's declaration never attempts to explain why that simple phone call was never made,  
 4 or why he never used some other method of communication to provide Petitioning Creditors with  
 5 reasonable notice of his purported inability to attend the noticed and agreed-upon deposition.  
 6 Indeed, from his declaration testimony, there does not appear to be any reasonable justification or  
 7 excuse for his failure to do so. The Lopez Declaration leaves completely unanswered the  
 8 following significant questions:

- 9 • What *did he do* to attempt to make travel arrangements, and when did he do it?
- 10 • When did he first realize that making the necessary travel arrangements for the
- 11 September 11, 2007, deposition *might* have become impossible?
- 12 • When did he make any effort to have that potential impossibility communicated to
- 13 Petitioning Creditors' counsel?
- 14 • When did he first realize that making the necessary travel arrangements for the
- 15 September 11, 2007, deposition had in fact become "*impossible*"?
- 16 • When did he make any effort to have that actual impossibility communicated to
- 17 Petitioning Creditors' counsel?

18 The fact that those questions (or others of similar import) have been left unanswered  
 19 speaks volumes. It supports the inference that those questions have gone unanswered because  
 20 truthful answers would do far more to condemn Lopez than to exculpate him. Petitioning  
 21 Creditors submit that is the inference that should be drawn, because Lopez — who has the ability  
 22 to come forward with stronger evidence of exculpation or excuse (if any exists) — has not done  
 23 so, despite the fact that it is very much in his interest to do so. Under these circumstances, he  
 24 should be ordered to pay the \$2,164.50, as part of the requested sanctions award, that he caused  
 25 Petitioning Creditors to unnecessarily incur.

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**B. Lopez's Purported "Stress," "Travel Headaches," and Inability to Pay a Sanctions Award Do Not Justify Denying this Motion**

Lopez continues to cast himself in the victim role, and attempt to gain sympathy for himself, by lamenting that: (a) submitting to a deposition is "very stressful,"<sup>8</sup> (b) traveling to San Diego causes him to suffer "travel headaches,"<sup>9</sup> and (c) he can not afford to pay his attorney in this case, much less any potential sanctions award. None of these complaints constitute a legitimate defense to the unreasonable delays and misconduct which gave rise to this Motion, particularly when no objection to the deposition was ever made. Likewise, such an excuse can not justify denying the Motion. Lopez cites no authority to the contrary.

Beyond that, his complaints are clearly pretextual afterthoughts that have no bearing on the merits of the Motion. For example, he complains of the expense burden he must endure when he has to make "*a three-day trip when [he has] no other important matters to attend to in California.*"<sup>10</sup> However, Lopez never voiced that concern prior to this Motion; and if he had, a cost-saving scheduling accommodation would have been made.<sup>11</sup> His point is pure theater and devoid of merit. The same is true of the other excuses proffered in paragraphs 5, 6, or elsewhere in the Lopez Declaration.

**C. Lopez's Complaints and Speculations About the True Purpose of the Questions asked in his Deposition are Irrelevant and Do Not Justify Denying this Motion**

In Paragraphs 7 - 10 of his Declaration, Lopez complains about, and mischaracterizes, some of the questions asked in his deposition as a *fishing expedition* related to other cases pending against him.<sup>12</sup> That characterization is patently inaccurate, as will be shown when it is used against him in the Petitioning Creditors' motion for summary judgment, in that all of the questions

<sup>8</sup> See, Declaration of Francis Lopez, page 4, lines 6 - 7.

<sup>9</sup> See, Declaration of Francis Lopez, page 4, lines 6 - 8.

<sup>10</sup> See, Declaration of Francis Lopez, page 4, lines 3 - 4.

<sup>11</sup> See, "Reply Declaration of L. Scott Keehn, Etc." filed concurrently herewith, ¶¶2-3.

<sup>12</sup> See, Declaration of Francis Lopez, pages 4 - 5.

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posed were calculated to discover facts pertaining to this second phase of the present case. As a layperson, Lopez can not presume to understand, and opine on, the legal strategy of counsel for Petitioning Creditors. Indeed, in paragraph 9 of his deposition, when referring to one allegedly improper line of questioning, Lopez admits that "I don't know what that was all about."<sup>13</sup> In any event, none of Lopez's statements or opinions are relevant to the issues raised in this Motion. They refer to events that occurred after his failure to comply with his discovery obligations. They should simply be ignored as irrelevant and speculative surplus.<sup>14</sup>

### III. CONCLUSION

The true magnitude of the harm caused by Lopez's dilatory discovery tactics can not be ascertained at this time because we have no way of gaging the magnitude of the *Involuntary Gap Claims* that will catapult to priority status over pre-petition claimants as a result of the delays in processing this case forward.<sup>15</sup> What we can say with certainty is that the delay has created a risk of that harm that is over and above the direct costs that Petitioning Creditors seek to recover here. That circumstance aggravates Lopez's level of culpability and enhances the need for the Court to decisively condemn his conduct by awarding damages that can be shown at this point.

For this and all of the foregoing reasons, this Court should issue an Order imposing monetary sanctions against Lopez in the amount of \$12,133.50, payable forthwith from sources other than property of the estate.

Dated: November 13, 2007

**KEEHN & ASSOCIATES**  
A Professional Corporation

By: //s// L. Scott Keehn  
L. Scott Keehn  
Attorneys for Petitioning Creditors

<sup>13</sup> See, Declaration of Francis Lopez, page 5, lines 1 - 3.

<sup>14</sup> See, Petitioning Creditors' Evidentiary Objections filed concurrently herewith.

<sup>15</sup> See, 11 U.S.C. §507(a)(3).

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8 **UNITED STATES BANKRUPTCY COURT**  
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11 In Re:

12 FRANCIS J. LOPEZ,

13 Alleged Debtor.

Case No. 05-05926-PBINV

Involuntary Chapter 7

**REPLY DECLARATION OF L. SCOTT  
KEEHN IN SUPPORT OF MOTION FOR  
AN ENFORCEMENT ORDER IMPOSING  
MONETARY SANCTIONS AGAINST THE  
DEBTOR**

**[BIFURCATED PHASE II]**

Date: November 19, 2007

Time: 2:00 p.m.

Judge: The Honorable Peter W. Bowie

Ctrm: 4

22 I, L. Scott Keehn, declare:

23 1. I am an attorney at law, duly licenced to practice before all courts of this State, and  
24 before the United States District Court for the Southern District of California. I am a shareholder  
25 of the firm Keehn & Associates APC, attorneys of record for Petitioning Creditors. I have  
26 personal knowledge of the factual matters stated herein.

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1           2.       At no time did Mr. Lopez, or anyone acting on his behalf, make any indication to  
2 me that there would be dates on which the deposition would be more convenient and cost-effective  
3 for Mr. Lopez because he would have "other important matters to attend to in California"<sup>1</sup> in  
4 addition to his deposition. Nor did anyone ever request that our office schedule his deposition to  
5 be in conjunction with such occasions.

6           3.       Had Mr. Lopez or his counsel requested that our office schedule Mr. Lopez's  
7 deposition to coincide with a time when he had other matters to attend to in California, I would  
8 have made every reasonable effort to comply with such a request.

9           I declare under penalty of perjury under the laws of the United States that the foregoing is  
10 true and correct, and that this Declaration was executed this 13th day of November, 2007, at San  
11 Diego, California.

12                               //s// L. Scott Keehn  
13                               L. Scott Keehn  
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28           <sup>1</sup> See, "Opposition of Alleged Debtor to Motion for Sanctions; Declaration of Francis J. Lopez in Support Thereof", Docket Item No. 115, Page 4, Line 4.



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9 **UNITED STATES BANKRUPTCY COURT**  
10 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11 In Re:

12 FRANCIS J. LOPEZ,  
13 Alleged Debtor.

Case No. 05-05926-PBINV

**EVIDENTIARY OBJECTIONS TO THE  
DECLARATION OF FRANCIS J. LOPEZ**

**[BIFURCATED PHASE II]**

Date: November 19, 2007

Time: 2:00 p.m.

Judge: The Honorable Peter W. Bowie

Ctrm: 4

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19 **TO: THE HONORABLE PETER W. BOWIE, UNITED STATES BANKRUPTCY**  
20 **JUDGE:**

21 Petitioning Creditors herein respectfully submit the following evidentiary objections, and  
22 hereby move to strike the specified portions of the "Declaration of Francis J. Lopez" submitted in  
23 support of his "Opposition of Alleged Debtor to Motion for Sanctions" (the "Lopez Declaration").

24 **REQUEST FOR RULING ON OBJECTIONS AND MOTION TO STRIKE**

25 Petitioning Creditors respectfully request that this Court issue rulings on the following  
26 evidentiary objections and motion to strike prior to ruling on the merits of their Motion.

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KEEHN & ASSOCIATES, APC  
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**EVIDENTIARY OBJECTIONS**

Pursuant to the Federal Rules of Evidence ("FRE"), made applicable herein by Rule 9017 of the Federal Rules of Bankruptcy Procedure, Paragraphs 7 - 10 of the Lopez Declaration should be stricken in their entirety.

Paragraphs 7 - 10 of the Lopez Declaration all pertain to the specific questions asked in Lopez's deposition conducted on October 22, 2007.<sup>1</sup> None of Lopez's proffered statements and opinions about those deposition questions has any bearing on the issues raised in this Motion. For example, nowhere in Paragraphs 7 - 10 does Lopez address either: (a) his failure to give reasonable notice of his purported "inability" to appear for his deposition, originally noticed for September 11, 2007, or (b) his extensive history of unreasonable delay and *game playing* as set forth in this Motion and its supporting Declarations. In sum, Paragraphs 7 - 10 are simply irrelevant and should be stricken in their entirety. FRE 402.

Beyond that, Lopez is not qualified to opine on Petitioning Creditors' legal strategy. FRE 701. In Paragraphs 7 - 10 of the Lopez Declaration, Lopez claims that some of the questions asked in his deposition were part of an improper *fishing expedition* related to other cases pending against him, but he fails to set forth facts establishing that he is competent to proffer such an opinion. Without the requisite foundation, the statements are improper and should be stricken. FRE 701.

Dated: November 13, 2007

**KEEHN & ASSOCIATES**  
A Professional Corporation

By: //s// L. Scott Keehn  
L. Scott Keehn  
Attorneys for **Petitioning Creditors**

<sup>1</sup> See, Declaration of Francis Lopez, pages 4 - 5.

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CSD 1183 [10/17/05]

Name, Address, Telephone No. &amp; I.D. No.

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**UNITED STATES BANKRUPTCY COURT**

SOUTHERN DISTRICT OF CALIFORNIA

325 West "F" Street, San Diego, California 92101-6991

In Re

FRANCIS J. LOPEZ,

BANKRUPTCY NO. 05-05926-PBINV

Tax I.D. (EIN) #: \_\_\_\_\_ /S.S.#: XXX-XX-\_\_\_\_ Debtor.

**NOTICE OF HEARING AND MOTION**

TO: Alleged Debtor, Francis J. Lopez, Other Parties in Interest, and their Attorneys of Record

**YOU ARE HEREBY NOTIFIED** that on January 28, 2008, at 10:30 a.m., in Department No. 4, Room 328 the Jacob Weinberger United States Courthouse, located at 325 West "F" Street, San Diego, California 92101-6991, there will be a hearing regarding the motion of the Petitioning Creditors for an Order Imposing Terminating Sanctions Against the Debtor.

Any opposition or other response to this motion must be served upon the undersigned and the original and one copy of such papers with proof of service must be filed with the Clerk of the U.S. Bankruptcy Court at 325 West "F" Street, San Diego, California 92101-6991, NOT LATER THAN FOURTEEN (14)<sup>1</sup> DAYS FROM THE DATE OF SERVICE.

DATED: December 27, 2007

//s// L. Scott Keehn

[Attorney for] Moving Party

<sup>1</sup>If you were served electronically or by mail, you have three (3) additional days to take the above-stated actions.

## CERTIFICATE OF SERVICE

I, the undersigned whose address appears below, certify:

That I am, and at all times hereinafter mentioned was, more than 18 years of age;

That on 27th day of December, 2007, I served a true copy of the within NOTICE OF MOTION AND HEARING; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR AN ORDER IMPOSING TERMINATING SANCTIONS AGAINST THE DEBTOR; DECLARATION OF L. SCOTT KEEHN IN SUPPORT OF MOTION FOR AN ORDER IMPOSING TERMINATING SANCTIONS AGAINST THE DEBTOR by [describe here mode of service]

FIRST CLASS MAIL

on the following persons [set forth name and address of each person served] and/or as checked below:

[✓] Attorney for Debtor (if required):  
M. Jonathan Hayes  
Law Office of M. Jonathan Hayes  
21800 Oxnard St., Suite 840  
Woodland Hills, CA 91367

[✓] For Chpt. 7, 11, & 12 cases:	[ ] For ODD numbered Chapter 13 cases:	[ ] For EVEN numbered Chapter 13 cases:
UNITED STATES TRUSTEE Department of Justice 402 West Broadway, Suite 600 San Diego, CA 92101	THOMAS H. BILLINGSLEA, JR., TRUSTEE 530 "B" Street, Suite. 1500 San Diego, CA 92101	DAVID L. SKELTON, TRUSTEE 525 "B" Street, Suite 1430 San Diego, CA 92101-4507

I certify under penalty of perjury that the foregoing is true and correct.

Executed on 12/27/07  
(Date)

//s// Cynthia K. Lay  
(Typed Name and Signature)

402 West Broadway, Suite 1210  
(Address)

San Diego, CA 92101  
(City, State, ZIP Code)

*Sean*

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**UNITED STATES BANKRUPTCY COURT  
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

In Re:

FRANCIS J. LOPEZ,  
 Alleged Debtor.

Case No. 05-05926-PBINV

**MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF MOTION  
 FOR AN ORDER IMPOSING  
 TERMINATING SANCTIONS AGAINST  
 THE DEBTOR**

**[BIFURCATED PHASE II]**

Date: January 28, 2008  
 Time: 10:30 a.m.  
 Judge: The Honorable Peter W. Bowie  
 Ctrm: 4

Pursuant to Rule 37(b) of the Federal Rules of Civil Procedure ("FRCP"), made applicable to these proceedings by Rule 9014(c) of the Federal Rules of Bankruptcy Procedure ("FRBP"), Petitioning Creditors respectfully submit their Motion for an Order from this Court imposing terminating sanctions against Lopez by striking his answer and entering an Order for Relief forthwith.

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# I. INTRODUCTION

This is the third sanctions motion that the misconduct of the alleged Debtor — Francis J. Lopez (“Lopez”) — has forced the Petitioning Creditors to bring in order to redress his continuing pattern of misconduct.<sup>1</sup> The first such motion resulted in an Order from this Court granting Petitioning Creditors’ request for evidentiary sanctions, and deferring an award of monetary sanctions.<sup>2</sup> Unfortunately, deferring the monetary sanctions award did not motivate Lopez to perform his duties as a litigant, and instead, Lopez continued his unreasonable delays and game playing. Based on that, on November 19, 2007, the Court granted Petitioning Creditors’ second sanctions motion, and ordered Lopez to pay Petitioning Creditors \$8,130.50 in monetary sanctions on or before December 19, 2007 (30 days from the date of the Court’s order).<sup>3</sup> Lopez has failed to pay any portion of those sanctions.<sup>4</sup>

At this point — *two and a half years after this involuntary petition was filed* — the record developed to date gives the Petitioning Creditors no reason to believe that Lopez will comply with any additional discovery order imposing monetary sanctions. Thus, a terminating sanction appears to be the only meaningful response to Lopez’s consistent course of misconduct that will serve to process this case forward and to halt the threat of further prejudice to all creditors that is engendered by further delay.

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<sup>1</sup> See, Docket Item 105 (Petitioning Creditors’ “Motion for an Enforcement Order: (1) Imposing Monetary Sanctions Against the Debtor; and (2) Imposing Evidentiary Sanctions Against the Debtor”); and Docket Item 114 (Petitioning Creditors’ “Motion for an Enforcement Order Imposing Monetary Sanctions Against the Debtor”).

<sup>2</sup> See Docket Item 108.

<sup>3</sup> See Docket Item 117.

<sup>4</sup> See the “Declaration of L. Scott Keehn, etc.” filed concurrently herewith (“LSK Decl.”) at ¶ 4.

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## II. DISCUSSION

### A. Terminating Sanctions are Warranted in Light of Lopez's Course of Misconduct and Refusal to Comply with this Court's Order Imposing Monetary Sanctions.

"Federal Rule of Civil Procedure 37 authorizes the district court, in its discretion, to impose a wide range of sanctions when a party fails to comply with the rules of discovery or with court orders enforcing those rules."<sup>5</sup> Here, FRCP 37 is made applicable to these proceedings by FRBP 9014(c), and grants this Court broad discretion to tailor appropriate sanctions for Lopez's unjustified refusal to comply with this Court's 11/19/2007 discovery order.<sup>6</sup>

Where, as here, an alleged debtor has engaged in a course of serious discovery misconduct, which includes failure to comply with court orders, the court may issue a terminating sanction consisting of an order striking the debtor's answer and entering an Order for Relief.<sup>7</sup> Lopez has repeatedly demonstrated that he is unmoved by either the threat of monetary sanctions, or an actual order from this Court imposing the threatened monetary sanctions.<sup>8</sup> He has once again *thumbed his nose* at Petitioning Creditors and this Court's authority by simply refusing to pay the monetary sanctions which this Court ordered him to pay. Based on that blatant display of defiance, it appears highly unlikely that Lopez would comply with another order imposing monetary sanctions. Fortunately, Petitioning Creditors do have a viable remedy in the form of terminating sanctions.<sup>9</sup> Considering the totality of circumstances as they are memorialized by the

<sup>5</sup> *Wyle v. R.J. Reynolds Industries, Inc.*, 709 F.2d 585, 589 (9th Cir. 1983).

<sup>6</sup> *Matter of Visioneering Const.*, 661 F.2d 119, 123 (9th Cir. 1981) ("The bankruptcy court, faced with an obstreperous alleged bankrupt, unequivocally had the power to apply Fed.R.Civ.P. 37 sanctions for obstruction of discovery"); *In re Williams*, 215 B.R. 289, 299 (Dist. Ct. D.R.I. 1997) ("the choice and severity of the sanction imposed is a matter reserved to the sanctioning court's discretion").

<sup>7</sup> *In re Rice*, 14 B.R. 843, 846 (9th Cir.BAP 1981); *Matter of Visioneering Const.*, supra, 661 F.2d at 123 (court's order striking alleged debtor's answer was an appropriate sanction since the debtor had "deliberately and obstinately refused to cooperate with discovery requests and court orders"); *De Falco v. Oak Lawn Public Library*, 25 Fed.Appx. 455, 457 (7th Cir. 2001) (terminating sanctions appropriate where the plaintiff "flouted the district court's order and exemplified the delay and avoidance to which the court referred").

<sup>8</sup> See, Docket Items 105 & 108.

<sup>9</sup> See, FRCP 37(b)(2)(A).

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1 record of Lopez's pervasive misconduct in this case, such terminating sanctions should be  
2 imposed forthwith.<sup>10</sup>

3 **B. Immediate Entry of the Order for Relief is Further Warranted in Order to Eliminate**  
4 **the Prejudice of Potentially Growing Priority Gap Claims.**

5 Delay has been the pervasive and foreseeable consequence of Lopez's continuing refusal  
6 to either participate in good faith or obey the orders of this Court. Whether by design or  
7 happenstance, that delay exposes all creditors to the unnecessary risk of dilution of the value of  
8 their claims — indeed the Bankruptcy process in its entirety — by the unending and  
9 uncontrollable expansion of priority gap claims. Lopez remains at liberty to create an unlimited  
10 variety of "Gap Claims"<sup>11</sup> which will slip ahead of all of the pre-petition unsecured creditors in  
11 priority. The plight of those creditors is exacerbated by the automatic stay which prevents them  
12 from taking any enforcement action to preserve the economic utility of their claims.<sup>12</sup> The risks of  
13 prejudice are further heightened by the initial delay that was occasioned by the bifurcation of the  
14 case — at Lopez's request — so that the Involuntary Gap Period was necessarily rendered longer  
15 than the norm.

16 What mischief has already occurred behind the shield of delay, and what further roguery  
17 may yet occur before the Order for Relief is ultimately entered, is impossible to ascertain. But,  
18 what can be seen with absolute clarity is that Lopez will not willingly discharge the duties of a  
19 litigant to participate in good faith in the process, nor will he obey the lawful orders of this Court.  
20 He has used his *passive/aggressive* tactic of delay to the prejudice of the creditors, and that  
21 prejudice must be truncated so that the risks of an expanding pool of priority claims is held in  
22 check.

23 Lopez's past and present disobedience is particularly troubling because it demonstrates  
24 that — beyond his willingness to disobey court mandates — he is impervious to the threat of  
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26 <sup>10</sup> *Cine Forty-Second St. Theatre Corp. v. Allied Artists Pictures Corp.*, 602 F.2d  
1062, 1068 (2<sup>nd</sup> Cir. 1979) ("sanctions must be weighed in light of the full record in the case").

27 <sup>11</sup> See 11 U.S.C. §§ 502(f) and 507(a)(3).

28 <sup>12</sup> See 11 U.S.C. § 362(a).

monetary sanctions. He just refuses to pay them. So, what the fulness of time has demonstrated is that neither the threat, nor the actual imposition of monetary sanctions, has any real impact on Lopez. Given this demonstration that he will neither play by the rules, nor obey the Court's mandates, it is appropriate to truncate his continuing ability to dilute the value of the process to his pre-petition creditors and demean the integrity of the Court by imposing the one sanction that can not be ignored — the terminating sanction that puts a trustee in control and caps the universe of priority gap claims.

### III. CONCLUSION

Patience is a virtue. But, like most virtues, it is vulnerable to exploitation, which converts its salutary objectives into a deplorable reality. This Court's patience has been beyond exemplary, while Lopez's exploitation of it has been unending, despicable, and without excuse. Because "*sanctions must be weighed in light of the full record in the case*",<sup>13</sup> here only a terminating sanction can set the scales aright. In the course of their three sanctions motions, the Petitioning Creditors have now thoroughly chronicled Lopez's extensive history of ignoring the mandates of both the discovery statutes and this Court's orders. His conduct is both inexcusable and intolerable. Based on that, and on all of the foregoing, Petitioning Creditors respectfully request that this Court issue an Order striking Lopez's answer and entering an Order for Relief forthwith.

Dated: December 27, 2007

**KEEHN & ASSOCIATES**  
A Professional Corporation

By: //s// L. Scott Keehn  
L. Scott Keehn  
Attorneys for Petitioning Creditors

<sup>13</sup> *Cine Forty-Second St. Theatre Corp. v. Allied Artists Pictures Corp.*, supra, 602 F.2d at 1068.

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8 Attorneys for **Petitioning Creditors**

9 **UNITED STATES BANKRUPTCY COURT**  
10 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11 In Re:

12 FRANCIS J. LOPEZ,  
13 Alleged Debtor.

Case No. 05-05926-PBINV

**DECLARATION OF L. SCOTT KEEHN IN  
SUPPORT OF MOTION FOR AN  
ORDER IMPOSING TERMINATING  
SANCTIONS AGAINST THE DEBTOR**

**[BIFURCATED PHASE II]**

Date: January 28, 2008  
Time: 10:30 a.m.  
Judge: The Honorable Peter W. Bowie  
Cttrm: 4

14  
15  
16  
17  
18  
19  
20 1. I am an attorney at law, duly licenced to practice before all courts of this State, and  
21 before the United States District Court for the Southern District of California. I am a shareholder  
22 of the firm Keehn & Associates APC, attorneys of record for Petitioning Creditors. I have  
23 personal knowledge of the factual matters stated herein.

24 2. The "Declaration of L. Scott Keehn in Support of Petitioning Creditors' Motion for  
25 an Enforcement Order: (1) Imposing Monetary Sanctions Against the Debtor; and (2) Imposing  
26 Evidentiary Sanctions Against the Debtor" was filed herein by my office on May 24, 2007, and is  
27  
28

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1 incorporated herein by this reference.<sup>1</sup> In that Declaration, I summarized the delay and *bad faith*  
 2 dilatory discovery tactics employed by Lopez during the 6-month period of December 3, 2006  
 3 through May 23, 2007.

4 3. The "Declaration of L. Scott Keehn Re: Motion for an Enforcement  
 5 Order imposing Monetary Sanctions Against the Debtor" was filed herein by my office on  
 6 October 19, 2007, and is incorporated herein by this reference.<sup>2</sup> In that Declaration I:  
 7 (a) summarized the delay and *bad faith* discovery tactics employed by Lopez in connection with  
 8 his deposition during phase two of these bifurcated proceedings; and (b) referred the Court to the  
 9 Declaration of Timothy P. Dillon filed herein on September 27, 2007,<sup>3</sup> describing Lopez's similar  
 10 pattern of *bad faith* and tactics of delay in other cases involving Petitioning Creditor Alan Stanly.

11 4. I was present at the hearing in this matter on November 19, 2007 when the Court  
 12 granted Petitioning Creditors' second sanctions motion, and ordered Lopez to pay Petitioning  
 13 Creditors \$8,130.50 in monetary sanctions on or before December 19, 2007 (30 days from the date  
 14 of the Court's order).<sup>4</sup> As of the date of this Declaration, Lopez has failed to pay any portion of  
 15 those sanctions.

16 5. Petitioning Creditors have no reason to believe that Lopez will comply with any  
 17 additional discovery order imposing monetary sanctions. Thus, a terminating sanction appears to  
 18 be the only meaningful response to Lopez's consistent course of misconduct.

19 I declare under penalty of perjury under the laws of the United States that the foregoing is  
 20 true and correct, and that this Declaration was executed this 27th day of December, 2007, at San  
 21 Diego, California.

22 //s// L. Scott Keehn  
 23 L. Scott Keehn  
 24

25 <sup>1</sup> See Exhibit A, Docket Item 105 (attachment #2).

26 <sup>2</sup> See Exhibit B, Docket Item 114 (attachment #2).

27 <sup>3</sup> See Exhibit C, Docket Item 111 (attachment #1).

28 <sup>4</sup> See Docket Item 117.

# EXHIBIT A

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 8  
 9 Attorneys for Petitioning Creditors

10  
 11 **UNITED STATES BANKRUPTCY COURT**  
 12 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

13 In Re:

14 FRANCIS J. LOPEZ,  
 15  
 16 Alleged Debtor.

Case No. 05-05926-PBINV

Involuntary Chapter 7

**DECLARATION OF L. SCOTT KEEHN IN  
 SUPPORT OF PETITIONING  
 CREDITORS' MOTION FOR AN  
 ENFORCEMENT ORDER: (1) IMPOSING  
 MONETARY SANCTIONS AGAINST THE  
 DEBTOR; AND (2) IMPOSING  
 EVIDENTIARY SANCTIONS AGAINST  
 THE DEBTOR**

**[BIFURCATED PHASE II]**

Date: June 25, 2007  
 Time: 10:30 a.m.  
 Judge: The Honorable Peter W. Bowie  
 Ctrm: 4

21  
 22 I, L. Scott Keehn, declare:

23 1. I am an attorney at law, duly licenced to practice before all courts of this State, and  
 24 before the United States District Court for the Southern District of California. I am a shareholder  
 25 of the firm Keehn & Associates APC, attorneys of record for Petitioning Creditors. I have  
 26 personal knowledge of the factual matters stated herein.

27 2. On November 03, 2006, my office served Lopez with Petitioning Creditors' First  
 28 Set of Written Discovery for Phase II (the "Phase II Written Discovery"), consisting of: (1) First

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1 Phase II Requests for Admission Propounded by Petitioning Creditors [10 Requests]; (2) First  
2 Phase II Request for Production of Documents by Petitioning Creditors [162 categories of  
3 documents]; and (3) First Phase II Interrogatories Propounded by Petitioning Creditors [35  
4 Interrogatories]. True and correct copies of the Phase II Written Discovery are attached hereto,  
5 marked Exhibits A, B and C respectively. Lopez's responses were due on December 4, 2006.

6 3. On December 03, 2006, Lopez served his "Response to Requests for Admission  
7 Propounded to Alleged Debtor Francis J. Lopez (Phase II)." **Lopez's responses were deficient,  
8 and Lopez failed to verify the responses.**

9 4. On December 05, 2006, Lopez served his "Response to Interrogatories Propounded  
10 to Alleged Debtor Francis J. Lopez (Phase II). **Lopez's responses were deficient, and Lopez  
11 failed to verify the responses.** At the same time, Lopez served his "Response to Requests for  
12 Production of Documents." **Lopez's responses were deficient.**

13 5. On December 13, 2006, I sent a *meet and confer* letter to Lopez's attorney, M.  
14 Jonathan Hayes, notifying him of the deficiencies in Lopez's responses to the Phase II Written  
15 Discovery.

16 6. On December 15, 2006, attorney Hayes and I participated in a telephonic *meet and*  
17 *confer* conference wherein the parties agreed that Lopez would provide supplemental responses to  
18 the Phase II Written Discovery on or before January 12, 2007.

19 7. On January 12, 2007 – the Deadline for Lopez to provide the promised  
20 supplemental responses to the Phase II Written Discovery – **Lopez failed, without explanation,  
21 to provide supplemental responses to the Phase II Written Discovery.**

22 8. On January 19, 2007, I sent a follow-up *meet and confer* letter to attorney Hayes  
23 requesting an explanation regarding Lopez's failure to provide the promised supplemental  
24 responses to discovery, and notifying Lopez of the imminent likelihood of a motion to compel his  
25 responses to the Phase II Written Discovery. **Lopez failed, without explanation, to respond to  
26 that *meet and confer* letter.**

27 9. On January 29, 2007, Petitioning Creditors filed a Motion to Compel responses to  
28 the Phase II Written Discovery. **Lopez failed, without explanation, to respond or file an**

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1 **Opposition to that Motion.**

2 10. On March 10, 2007 – a Saturday, just two days prior to the scheduled hearing on  
3 Petitioning Creditors' Motion to Compel Lopez's responses to the Phase II Written Discovery –  
4 attorney Hayes emailed me approximately 155 pages of documents, purportedly in response to the  
5 "First Phase II Request for Production of Documents by Petitioning Creditors." **This last-minute**  
6 **"document dump"** was improper because the documents: (1) were not responsive to the  
7 Requests, (2) were not organized by category of Request, and (3) consisted of at least 103  
8 pages of pleadings filed in the San Diego Superior Court which are already in the Petitioning  
9 Creditors' possession. Lopez failed, without explanation, to explain the deficiencies and/or  
10 his failure to provide the agreed-upon supplemental responses.

11 11. On March 12, 2007, I appeared at the hearing during which this Court granted  
12 Petitioning Creditors' motion to compel Lopez to provide supplemental responses to the Phase II  
13 Written Discovery.<sup>1</sup> The Court ordered Lopez to provide the supplemental responses on or before  
14 April 11, 2007. The Court — in open session — indicated that it was deferring its ruling on the  
15 request for monetary sanctions of \$4,242 because: (a) it wanted the risk of those sanctions to serve  
16 as a *Sword of Damocles* to encourage compliance with the Court's order; and (b) Lopez would  
17 have to "work his way out of those sanctions."

18 12. On April 10, 2007, Lopez mailed my office a set of supplemental responses to the  
19 Phase II Written Discovery which were patently deficient in that, i.e., they failed to fully respond  
20 to the Interrogatories asked, failed to provide facts in support of asserted denials to the Requests  
21 for Admissions, and failed to produce responsive documents. True and correct copies of Lopez's  
22 supplemental responses are attached hereto marked Exhibits D, E and F.

23 13. On May 11, 2007, the parties, through their counsel, attended a status conference  
24 wherein this Court ordered Lopez to file proper supplemental responses to the Phase II Written  
25 Discovery on or before May 21, 2007. Later that afternoon, I met with attorney Hayes at my office  
26 regarding the deficiencies in Lopez's supplemental responses to the Phase II Written Discovery.  
27

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28 <sup>1</sup> See, Docket Item #93.

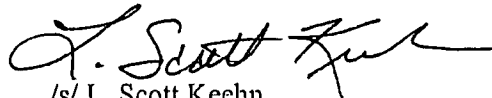
1 Attorney Hayes requested that I set forth the deficiencies in a *meet and confer* letter to him.

2 14. As requested, on May 14, 2007, I sent a *meet and confer* letter via email and first  
3 class United States mail to attorney Hayes which enumerated each and every deficiency in Lopez's  
4 supplemental responses to the Phase II Written Discovery. A true and correct copy of that letter is  
5 attached hereto, marked Exhibit G.

6 15. After the close of business, at 7:10 P.M., on May 21, 2007 – the deadline for Lopez  
7 to supplement his supplemental responses to the Phase II Written Discovery – attorney Hayes  
8 emailed me a request for two additional days for Lopez to supplement his responses to the Phase II  
9 Written Discovery. The next morning, on May 22, 2007, I responded to attorney Hayes' email by  
10 indicating that I would grant the requested two-day extension of time, in exchange for a stipulation  
11 providing Petitioning Creditors with an equivalent two-business-day extension of time – from May  
12 25, 2007 to May 30, 2007 – to file any necessary discovery motion. A true and correct copy of that  
13 email correspondence is attached hereto, marked Exhibit H.

14 16. On May 23, 2007, attorney Hayes sent me an email wherein he withdrew Lopez's  
15 request for an extension of time, and notified me that Lopez would not be providing any additional  
16 responses to the Phase II Written Discovery. A true and correct copy of that email correspondence  
17 is attached hereto, marked Exhibit I.

18 I declare under penalty of perjury under the laws of the United States that the foregoing is  
19 true and correct, and that this Declaration was executed this 24th day of May, 2007, at San Diego,  
20 California.

21   
22 /s/ L. Scott Keehn  
23 L. Scott Keehn  
24  
25  
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27  
28

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# EXHIBIT B

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5 Attorneys for Petitioning Creditors

6  
7  
8 **UNITED STATES BANKRUPTCY COURT**  
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 In Re:

12 FRANCIS J. LOPEZ,

13 Alleged Debtor.  
14  
15  
16  
17  
18  
19  
20  
21

) Case No. 05-05926-PBINV

) Involuntary Chapter 7

) **DECLARATION OF L. SCOTT KEEHN RE:**  
) **MOTION FOR AN ENFORCEMENT**  
) **ORDER IMPOSING MONETARY**  
) **SANCTIONS AGAINST THE DEBTOR**

) **[BIFURCATED PHASE II]**

) Date: November 19, 2007

) Time: 2:00 p.m.

) Judge: The Honorable Peter W. Bowie

) Ctrm: 4

22 I, L. Scott Keehn, declare:

23 1. I am an attorney at law, duly licenced to practice before all courts of this State, and  
24 before the United States District Court for the Southern District of California. I am a shareholder  
25 of the firm Keehn & Associates APC, attorneys of record for Petitioning Creditors. I have  
26 personal knowledge of the factual matters stated herein.

27 2. The "Declaration of L. Scott Keehn in Support of Petitioning Creditors' Motion for  
28 an Enforcement Order: (1) Imposing Monetary Sanctions Against the Debtor; and (2) Imposing

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0489

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1 Evidentiary Sanctions Against the Debtor" was filed herein by my office on May 24, 2007, and is  
2 incorporated herein by this reference.<sup>1</sup> In that Declaration, I summarized the delay and *bad faith*  
3 discovery tactics employed by Lopez during the 6-month period of December 3, 2006 through  
4 May 23, 2007.

5 3. On March 12, 2007, the Court ordered Lopez to provide supplemental discovery  
6 responses on or before April 11, 2007. The Court — in open session — indicated that it was  
7 deferring its ruling on the request for monetary sanctions of \$4,442 because: (a) it wanted the risk  
8 of those sanctions to serve as a *Sword of Damocles* to encourage compliance with the Court's  
9 order; and (b) Lopez would have to "work his way out of those sanctions." Unfortunately, Lopez  
10 is apparently unimpressed with either this Court's order or the threat of sanctions.

11 4. On June 25, 2007, the Court conducted its hearing on Petitioning Creditors' request  
12 for monetary and evidentiary sanctions based on Lopez's dilatory tactics up to that time.<sup>2</sup> The  
13 Court deferred again the imposition of previously requested monetary sanctions (\$4,442.00), but  
14 ordered the imposition of evidentiary sanctions precluding Lopez's use of any documents which he  
15 had not yet produced.<sup>3</sup>

16 5. On the courthouse steps following the June 25, 2007 hearing, I conferred with  
17 Lopez's attorney Jonathan Hayes regarding Petitioning Creditors' request to take Lopez's  
18 deposition. At that time, I stated that I would like to calendar the deposition before July 31, 2007  
19 because I would be out of my office for virtually the entire month of August. Mr. Hayes and I  
20 agreed that either July 20 or July 27 would work on our calendars, and Mr. Hayes indicated that  
21 he would inquire as to Lopez's availability on those dates.

22 6. Three days later, on June 28, 2007, Mr. Hayes transmitted to me the following  
23 email message: "*I have spoken to my client about the deposition dates we discussed, July 20 or 27.*  
24 *He is checking his calendar. I will let you know shortly.*" (Emphasis added.)

25 \_\_\_\_\_  
26 <sup>1</sup> See Exhibit 1, Docket Item 105 (attachment #2).

27 <sup>2</sup> See Exhibit 2, Docket Item 110 [Transcript of the June 25, 2007 hearing ("6/25/07  
28 Transcript")].

<sup>3</sup> See Exhibit 2, 6/25/07 Transcript at p. 17.



1           7.       Twenty-two days later — in the early evening of July 20, 2007 — Mr. Hayes  
2 transmitted an email suggesting, for the first time, July 31, 2007, as an available date for the  
3 deposition.

4           8.       Given that July 31, 2007 would be my last day in the office before a 30-day  
5 vacation, I knew I would be fully consumed with matters necessary to be completed in preparation  
6 for that absence. Because of that, and because of the fact that I had received absolutely no  
7 communication from Mr. Hayes' office following the June 28, 2007 email, my office issued and  
8 mailed to Mr. Hayes a notice of Lopez's deposition for Tuesday, September 11, 2007, at 9:00 a.m.  
9 in our office.

10          9.       On July 31, 2007, there was a further Status Conference in the case. I reported to  
11 the Court the events summarized in paragraphs 5-8 above, including the fact that we had noticed  
12 Mr. Lopez's deposition for September 11, 2007. Mr. Hayes stated in open court that he would  
13 communicate that information to Mr. Lopez, and let me know if there was any problem with that  
14 date. That was the last I heard from Mr. Hayes until September 10, 2007.

15          10.       In the afternoon of September 10, 2007 — less than 24 hours before the deposition  
16 was scheduled to begin — Lopez's attorney sent me a brief email stating that Lopez was "*unable*  
17 *to make travel arrangements for the deposition tomorrow.*" The email suggested October 8, 2007  
18 or October 22, 2007 as possible dates for the deposition. Lopez's deposition is currently  
19 scheduled for October 22, 2007 at 9:30 a.m. based on Mr. Hayes' representation that it was an  
20 acceptable date and time.

21          11.       As stated in open court on June 25, 2007,<sup>4</sup> once Lopez's deposition is conducted,  
22 Petitioning Creditors intend to prepare and file their summary judgment motion to establish that  
23 Lopez was in fact not paying his debts as they came due as of the date of the involuntary petition.

24          12.       Lopez's past misconduct in this case mirrors his extensive misconduct in other  
25 litigation involving Lopez and Petitioning Creditor Alan Stanly in other San Diego courts, as  
26 detailed in the Declaration of Timothy P. Dillon filed herein on September 27, 2007 and  
27  
28

---

<sup>4</sup> See Exhibit 2, 6/25/07 Transcript at p. 18.

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incorporated herein by this reference.<sup>5</sup> Considering Lopez's pervasive custom and practice of refusing to perform his duties as a litigant unless and until he is [forensically] bludgeoned into submission by the court, it appears clear that monetary sanctions should now be imposed. Without a significant sanctions order, I do not believe that Lopez will ever voluntarily appear for, and participate in good faith at, his deposition in this case.

13. My office spent a total of 13.6 hours preparing this second motion for sanctions to redress Lopez's discovery abuses. Specifically, attorney Leslie F. Keehn spent 12.6 hours working on this motion, at her standard hourly rate of \$225.00. I worked 1.0 hour, at my standard hourly rate of \$320.00. Petitioning Creditors will be billed a total of \$3,155.00 for this motion.

14. I have reviewed the applicable time and billing records generated by my office. True and correct copies of those records are attached hereto as Exhibit 4,<sup>6</sup> and are summarized as follows: (a) \$2,164.50 for 7.7 hours (attorney and paralegal time) spent preparing the necessary documents and questions for Lopez's deposition; (b) \$224.00 for 0.7 hours of my time to confer with attorney Hayes regarding Lopez's last minute failure to appear; and (c) \$6,590.00 for 25.7 hours of total attorney time (including my time and Leslie F. Keehn's time) reviewing the requisite evidence, and drafting the declarations in support of Petitioning Creditors' renewed motion for the monetary sanctions originally requested on May 24, 2007.

15. With this motion, Petitioning Creditors are seeking monetary sanctions in the total amount of \$12,133.50 to fully reimburse them for the fees they have actually incurred as described in Paragraphs 13 and 14 above.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this Declaration was executed this 19th day of October, 2007, at San Diego, California.

/s/ L. Scott Keehn  
L. Scott Keehn

<sup>5</sup> See Exhibit 3, Docket Item 111 (attachment #1).

<sup>6</sup> The non-applicable entries in the billing records contained in Exhibit 4 have been redacted.

# EXHIBIT 1

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 8 Attorneys for Petitioning Creditors

9 UNITED STATES BANKRUPTCY COURT  
 10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

11 In Re:

12 FRANCIS J. LOPEZ,

13 Alleged Debtor.

Case No. 05-05926-PBINV

Involuntary Chapter 7

DECLARATION OF L. SCOTT KEEHN IN  
 SUPPORT OF PETITIONING  
 CREDITORS' MOTION FOR AN  
 ENFORCEMENT ORDER: (1) IMPOSING  
 MONETARY SANCTIONS AGAINST THE  
 DEBTOR; AND (2) IMPOSING  
 EVIDENTIARY SANCTIONS AGAINST  
 THE DEBTOR

[BIFURCATED PHASE II]

Date: June 25, 2007

Time: 10:30 a.m.

Judge: The Honorable Peter W. Bowie

Ctrm: 4

21 I, L. Scott Keehn, declare:

22 1. I am an attorney at law, duly licenced to practice before all courts of this State, and  
 23 before the United States District Court for the Southern District of California. I am a shareholder  
 24 of the firm Keehn & Associates APC, attorneys of record for Petitioning Creditors. I have  
 25 personal knowledge of the factual matters stated herein.  
 26

27 2. On November 03, 2006, my office served Lopez with Petitioning Creditors' First  
 28 Set of Written Discovery for Phase II (the "Phase II Written Discovery"), consisting of: (1) First

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0494

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1 Phase II Requests for Admission Propounded by Petitioning Creditors [10 Requests]; (2) First  
2 Phase II Request for Production of Documents by Petitioning Creditors [162 categories of  
3 documents]; and (3) First Phase II Interrogatories Propounded by Petitioning Creditors [35  
4 Interrogatories]. True and correct copies of the Phase II Written Discovery are attached hereto,  
5 marked Exhibits A, B and C respectively. Lopez's responses were due on December 4, 2006.

6 3. On December 03, 2006, Lopez served his "Response to Requests for Admission  
7 Propounded to Alleged Debtor Francis J. Lopez (Phase II)." Lopez's responses were deficient,  
8 and Lopez failed to verify the responses.

9 4. On December 05, 2006, Lopez served his "Response to Interrogatories Propounded  
10 to Alleged Debtor Francis J. Lopez (Phase II). Lopez's responses were deficient, and Lopez  
11 failed to verify the responses. At the same time, Lopez served his "Response to Requests for  
12 Production of Documents." Lopez's responses were deficient.

13 5. On December 13, 2006, I sent a *meet and confer* letter to Lopez's attorney, M.  
14 Jonathan Hayes, notifying him of the deficiencies in Lopez's responses to the Phase II Written  
15 Discovery.

16 6. On December 15, 2006, attorney Hayes and I participated in a telephonic *meet and*  
17 *confer* conference wherein the parties agreed that Lopez would provide supplemental responses to  
18 the Phase II Written Discovery on or before January 12, 2007.

19 7. On January 12, 2007 – the Deadline for Lopez to provide the promised  
20 supplemental responses to the Phase II Written Discovery – Lopez failed, without explanation,  
21 to provide supplemental responses to the Phase II Written Discovery.

22 8. On January 19, 2007, I sent a follow-up *meet and confer* letter to attorney Hayes  
23 requesting an explanation regarding Lopez's failure to provide the promised supplemental  
24 responses to discovery, and notifying Lopez of the imminent likelihood of a motion to compel his  
25 responses to the Phase II Written Discovery. Lopez failed, without explanation, to respond to  
26 that *meet and confer* letter.

27 9. On January 29, 2007, Petitioning Creditors filed a Motion to Compel responses to  
28 the Phase II Written Discovery. Lopez failed, without explanation, to respond or file an

1 Opposition to that Motion.

2 10. On March 10, 2007 – a Saturday, just two days prior to the scheduled hearing on  
3 Petitioning Creditors' Motion to Compel Lopez's responses to the Phase II Written Discovery –  
4 attorney Hayes emailed me approximately 155 pages of documents, purportedly in response to the  
5 "First Phase II Request for Production of Documents by Petitioning Creditors." This last-minute  
6 "document dump" was improper because the documents: (1) were not responsive to the  
7 Requests, (2) were not organized by category of Request, and (3) consisted of at least 103  
8 pages of pleadings filed in the San Diego Superior Court which are already in the Petitioning  
9 Creditors' possession. Lopez failed, without explanation, to explain the deficiencies and/or  
10 his failure to provide the agreed-upon supplemental responses.

11 11. On March 12, 2007, I appeared at the hearing during which this Court granted  
12 Petitioning Creditors' motion to compel Lopez to provide supplemental responses to the Phase II  
13 Written Discovery.<sup>1</sup> The Court ordered Lopez to provide the supplemental responses on or before  
14 April 11, 2007. The Court — in open session — indicated that it was deferring its ruling on the  
15 request for monetary sanctions of \$4,242 because: (a) it wanted the risk of those sanctions to serve  
16 as a *Sword of Damocles* to encourage compliance with the Court's order; and (b) Lopez would  
17 have to "work his way out of those sanctions."

18 12. On April 10, 2007, Lopez mailed my office a set of supplemental responses to the  
19 Phase II Written Discovery which were patently deficient in that, i.e., they failed to fully respond  
20 to the Interrogatories asked, failed to provide facts in support of asserted denials to the Requests  
21 for Admissions, and failed to produce responsive documents. True and correct copies of Lopez's  
22 supplemental responses are attached hereto marked Exhibits D, E and F.

23 13. On May 11, 2007, the parties, through their counsel, attended a status conference  
24 wherein this Court ordered Lopez to file proper supplemental responses to the Phase II Written  
25 Discovery on or before May 21, 2007. Later that afternoon, I met with attorney Hayes at my office  
26 regarding the deficiencies in Lopez's supplemental responses to the Phase II Written Discovery.

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1 Sec. Docket Item #93.

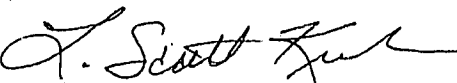
1 Attorney Hayes requested that I set forth the deficiencies in a *meet and confer* letter to him.

2 14. As requested, on May 14, 2007, I sent a *meet and confer* letter via email and first  
3 class United States mail to attorney Hayes which enumerated each and every deficiency in Lopez's  
4 supplemental responses to the Phase II Written Discovery. A true and correct copy of that letter is  
5 attached hereto, marked Exhibit G.

6 15. After the close of business, at 7:10 P.M., on May 21, 2007 – the deadline for Lopez  
7 to supplement his supplemental responses to the Phase II Written Discovery – attorney Hayes  
8 emailed me a request for two additional days for Lopez to supplement his responses to the Phase II  
9 Written Discovery. The next morning, on May 22, 2007, I responded to attorney Hayes' email by  
10 indicating that I would grant the requested two-day extension of time, in exchange for a stipulation  
11 providing Petitioning Creditors with an equivalent two-business-day extension of time – from May  
12 25, 2007 to May 30, 2007 – to file any necessary discovery motion. A true and correct copy of that  
13 email correspondence is attached hereto, marked Exhibit H.

14 16. On May 23, 2007, attorney Hayes sent me an email wherein he withdrew Lopez's  
15 request for an extension of time, and notified me that Lopez would not be providing any additional  
16 responses to the Phase II Written Discovery. A true and correct copy of that email correspondence  
17 is attached hereto, marked Exhibit I.

18 I declare under penalty of perjury under the laws of the United States that the foregoing is  
19 true and correct, and that this Declaration was executed this 24th day of May, 2007, at San Diego,  
20 California.

21   
22 /s/ L. Scott Kechn  
23 L. Scott Kechn  
24  
25  
26  
27  
28

KEEHN & ASSOCIATES, APC  
ATTORNEYS AND COUNSELORS AT LAW  
402 WEST BROADWAY, SUITE 1210  
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# EXHIBIT 2

0498

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
CHIEF JUDGE PETER W. BOWIE, PRESIDING

FRANCIS J. LOPEZ

)  
)  
) CASE NO. 05-05926-PB  
)  
)  
)

- 
- 1) STATUS CONFERENCE ON INVOLUNTARY PETITION AND ANSWER
  - 2) PETITIONING CREDITORS' MOTION FOR AN ENFORCEMENT ORDER: A ) IMPOSING MONETARY SANCTIONS AGAINST THE DEBTOR;  
AND, B) IMPOSING EVIDENTIARY SANCTIONS AGAINST THE DEBTOR.

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
SAN DIEGO, CALIFORNIA  
MONDAY, JUNE 25, 2007

SAN DIEGO BANKRUPTCY REPORTERS  
BY: LYNETTE ALVES  
P.O.BOX 496  
SOLANA BEACH, CA 92075  
(858) 336-8558

APPEARANCES

M. JONATHAN HAYES

LAW OFFICE OF M. JONATHAN HAYES

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L. SCOTT KEEHN

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SAN DIEGO, CA 92101

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SAN DIEGO, CALIFORNIA, MONDAY, JUNE 25, 2007 , 10:00 A.M.

--- O O O ---

0500

THE CLERK: IN THE MATTER OF FRANCIS J. LOPEZ. TWO MATTERS: CONTINUED STATUS CONFERENCE ON INVOLUNTARY PETITION AND ANSWER; AND, PETITIONING CREDITORS' MOTION FOR AN ENFORCEMENT ORDER (1) IMPOSING MONETARY SANCTIONS AGAINST THE DEBTOR; AND, (2) IMPOSING EVIDENTIARY SANCTIONS AGAINST THE DEBTOR. APPEARANCES, PLEASE.

MR. KEEHN: GOOD MORNING, YOUR HONOR.

SCOTT KEEHN APPEARING ON BEHALF OF THE PETITIONING CREDITORS.

MR. HAYES: GOOD MORNING, YOUR HONOR.

JOHN HAYES APPEARING FOR THE DEBTOR -- ALLEGED DEBTOR.

MR. KEEHN: YOUR HONOR, THIS PARTICULAR ODYSSEY BEGAN BEFORE THANKSGIVING, IF YOU CAN BELIEVE THAT, BACK ON NOVEMBER 3RD.

THE COURT: THAT'S NOTHING AT ALL COMPARED TO ADAMS.

MR. KEEHN: YOU KNOW, I WAS HOPING YOU WOULDN'T JUST CONFINE YOURSELF TO THIS RECORD. AND ALSO THE CASE BEFORE, THERE WERE THIRTEEN MEET AND CONFER LETTERS; AND WE DON'T MEET THAT RECORD, EITHER.

BUT THIS IS AN INVOLUNTARY PETITION. AND WE WERE HOPING TO MOVE IT ALONG WITH A LITTLE MORE ALACRITY THAN YOU MIGHT EXPECT IN --

THE COURT: SO YOU'RE SAYING IT REMAINS INVOLUNTARY?

MR. KEEHN: OH, VERY INVOLUNTARY.

WHAT WE HAVE HERE IN RESPONSE TO OUR REQUEST FOR DISCOVERY

THAT WERE PROMULGATED NOW SEVEN MONTHS AGO; AT FIRST THERE WAS NO RESPONSE AT ALL IN THE APPROPRIATE PERIOD. ALL OBJECTIONS WERE WAIVED. AND WHEN WE MOVED FOR MOTION TO COMPEL THE SANCTIONS. COUNSEL COMES IN AND APOLOGIZES FOR DEBTOR, BEMOANS THE FACT THAT WE'RE ASKING FOR A LOT OF INFORMATION; AND AGREES TO THE COURT'S RULING THAT SUPPLEMENTAL RESPONSES SHOULD BE PROVIDED NOT LATER THAN THE 21ST OF MAY.

WELL, ON THE 21ST OF MAY -- AND, ACTUALLY NOTHING HAPPENED BETWEEN THE TIME THE COURT MADE THAT -- GAVE THE DEBTOR THAT SECOND CHANCE. NOTHING HAPPENED BETWEEN THEN AND MAY 21ST UNTIL SHORTLY AFTER SEVEN IN THE EVENING WHEN MR. HAYES E-MAILED MY E-MAIL WITH A REQUEST FOR A DAY OR TWO EXTENSION.

WELL, I DIDN'T HAVE ANY PROBLEM WITH A DAY OR TWO EXTENSION, AS LONG AS I GET AN EQUAL EXTENSION AND TIME TO REPLY. AS SOON AS I SAW THE E-MAIL THE FOLLOWING MORNING, I RELAYED THAT INFORMATION TO MR. HAYES.

IN RESPONSE TO THAT, I RECEIVED ANOTHER E-MAIL THAT SAID, NO, WE'RE NOT GOING TO PROVIDE ANYTHING ELSE AND WE'RE WITHDRAWING OUR REQUEST FOR EXTENSION.

SO ONCE AGAIN, WE HAVE THE TIME PERIOD PASSING AND, OF COURSE, WE WERE PREJUDICED, NOT IN AN OVERWHELMING DEGREE, BUT NOTICEABLY BY THE FACT THAT IN RESPONSE TO THE FIRST E-MAIL WE HAD ANTICIPATED THAT WE WOULD NOT HAVE TO MEET THE ORIGINAL DEADLINE FOR RESPONSE.

SO, UPON RECEIVING THE WITHDRAWAL E-MAIL, WE QUICKLY

REGROUPED AND DID OUR REPLY -- DID OUR MOTION, RATHER. WE HAD ONLY A FEW DAYS TO DO THAT, GIVEN THE SETTING OF THIS PARTICULAR HEARING IN ORDER TO GIVE AN ADEQUATE TIME TO RESPOND. SO WE DID THAT.

AND WE HAVE WHAT HAS BECOME A FAMILIAR PATTERN. WE HAVE, WHAT PURPORTS TO BE RESPONSES GIVEN ON BEHALF OF MR. LOPEZ; AND, IN FACT, THEY'RE NOT REALLY GOOD-FAITH RESPONSES AT ALL. THEY PROVIDE SOME PAPER, MOST OF WHICH WAS PLEADINGS IN CASES THAT MR. LOPEZ HAD EVERY REASON TO KNOW THAT WE ALREADY HAD AND SO WOULD BE COMPLETELY USELESS.

NOW, THIS PARTICULAR DISCOVERY DISPUTE CREATES A DYNAMIC THAT'S DIFFERENT FROM MOST DISCOVERY DISPUTES, BECAUSE MOST DISCOVERY DISPUTES ARISE IN TRADITIONAL LITIGATION. AND TRADITIONAL LITIGATION IS ALWAYS LOOKING BACK AT AN EVENT AND IS STATIC, IN TERMS OF WHERE THE LIABILITIES WILL FALL. BECAUSE THEY DEPEND ON WHAT HAPPENED BACK WHEN WHATEVER INCIDENT OCCURRED, WHATEVER COURSE OF CONDUCT OCCURRED THAT GAVE RISE TO THE TRADITIONAL LITIGATION. SO YOU'RE ALWAYS LOOKING BACKWARDS AND YOU'RE NOT REALLY CONCERNED ABOUT WHAT'S HAPPENING ON A GOING-FORWARD BASIS.

THE DIFFERENT DYNAMIC THAT'S CREATED IN EVERY INVOLUNTARY PETITION IS THE INVOLUNTARY GAP DYNAMIC. BECAUSE, WHILE DELAY IS ALWAYS PREJUDICIAL TO BRINGING A MATTER TO ITS QUICK AND COST EFFECTIVE CONCLUSION, IT HAS AN AUXILIARY PREJUDICE IN INVOLUNTARY CASES BECAUSE THE DEBTOR IS FREE TO CREATE OBLIGATIONS THAT WILL BECOME INVOLUNTARY GAP

CLAIMS AND LEAPFROG AHEAD IN PRIORITY TO THE CLAIMS OF THE CREDITORS THAT BROUGHT THE ACTION.

AND THAT PARTICULAR FORM OF PREJUDICE IS RENDERED ALL THE MORE DISTURBING BECAUSE THERE'S NO WAY TO MONITOR IT, NO WAY TO QUANTIFY IT. MR. LOPEZ IS OUT THERE. MAYBE HE'S NOT CREATING INVOLUNTARY GAP CLAIMS AND PERHAPS HE IS. BUT THE RISK IS THAT THE UTILITY OF THE REMEDY OF INVOLUNTARY BANKRUPTCY AS A CREDITOR'S REMEDY IS SUBJECT TO THIS FORM OF DILUTION, SIMPLY BECAUSE THE ALLEGED DEBTOR REFUSES -- I WANT TO UNDERSCORE THAT -- REFUSES TO COMPLY WITH THE DISCOVERY IN GOOD FAITH.

WE ARE TRYING TO NARROW THE ISSUES WITH THE EVIDENCE THAT'S AVAILABLE SO THAT WE CAN PROCEED IN THE SECOND PHASE, AS WE DID IN THE FIRST, TO PRESENT THE ISSUES TO THE COURT IN A SUMMARY JUDGMENT FASHION, BECAUSE WE THINK THIS CASE IS AMENABLE TO SUMMARY JUDGMENT.

AND MR. LOPEZ IS JUST VERY ADROITLY BLOCKING THAT WITH THIS PASSIVE/AGGRESSIVE TACTIC OF HIS, WHERE HE DOESN'T REPLY AT ALL UNTIL HIS BACK IS ABSOLUTELY TO THE WALL AND SOME DRACONIAN CONSEQUENCE MIGHT BEFALL HIM. AND THEN HE'LL RESPOND, BUT HE WON'T REALLY RESPOND IN GOOD FAITH. HE GIVES YOU A PARITY OF GOOD-FAITH, THAT DOES NOT ADVANCE THE PURPOSES OF DISCOVERY.

NOW, WE SHOULDN'T HAVE TO WAIT UNTIL HIS BACK IS AGAINST THE WALL TO GET OUR RESPONSES. WE'RE ENTITLED TO OUR RESPONSES THIRTY DAYS AFTER THEY'RE SERVED, THIRTY-THREE WHEN THEY'RE SERVED BY MAIL.

AND WE'RE LONG PAST THAT WITH THESE DISCOVERY REQUESTS THAT WERE PROMULGATED BACK IN NOVEMBER. AND AS THE OBJECTION DISCLOSES, THE ALLEGED DEBTOR IS WELL AWARE THAT WE'RE DOING, ONCE AGAIN, WHAT WE DID IN THE FIRST PHASE; WE'RE USING THE WRITTEN DISCOVERY AS, TO SORT OF TEE UP THE ISSUES FOR OUR, DEPOSITION EXAMINATION, WHICH IS THE NORMAL WAY TO PROCEED.

SO BY HINDERING AND DELAYING THE DISCOVERY PROCESS IN THE WRITTEN PHASE, HE NATURALLY DEFERS THE ORAL EXAMINATION, WHICH IN TURN DEFERS, ONCE AGAIN, THE DAY OF RECKONING. AND ALL THE WHILE HE'S FREE TO BE OUT THERE INCURRING FURTHER GAP CLAIMS.

SO I THINK THAT WHAT WE'VE SUGGESTED IN OUR PAPERS IS THE APPROPRIATE RESPONSE. NUMBER ONE, THE DEFERRED MONETARY SANCTIONS THAT THE COURT ORIGINALLY AWARDED OF \$42 000 -- EXCUSE ME, I'M DREAMING -- \$4,242. SHOULD BE IMPOSED.

THE -- I DON'T THINK THAT THE RESULT THE COURT HAD HOPED TO ACHIEVE BY DEFERRING IT HAS BEEN ACHIEVED. I DON'T THINK IT EVER WILL BE ACHIEVED. I THINK THAT THIS IS JUST MR. LOPEZ'S LITIGATION TACTIC; HALT, HINDER AND DELAY AND MAYBE I'LL HAVE TO ANSWER SOMEDAY.

THE EVIDENTIARY SANCTIONS THAT WE'VE REQUESTED, I THINK, ARE APPROPRIATE. AND THEY WILL FACILITATE THE PURPOSE OF DISCOVERY, BECAUSE THEY NARROW THE ISSUES FOR US, EVEN WITHOUT THE COOPERATION OF THE ALLEGED DEBTOR.

SO WE WOULD REQUEST THAT THE EVIDENTIARY SANCTIONS BE



IMPOSED AS REQUESTED, AND THAT THE MONETARY SANCTION BE AWARDED FORTHWITH, WITH A DATE CERTAIN ESTABLISHED AS TO WHEN THAT SECTION SHOULD BE PAID.

THE COURT: MR. HAYES.

MR. HAYES: YOUR HONOR, THANK YOU. I HAVE A COUPLE OF COMMENTS.

THE FIRST ONE IS, I WANTED TO COMMENT ON THIS, THE REQUEST I'VE MADE OF MR. KEEHN FOR ANOTHER ONE OR TWO DAYS. I'VE HAD -- MR. LOPEZ LIVES IN FLORIDA, AND I HAVE A HARD TIME COMMUNICATING WITH HIM. WE COMMUNICATE BY E-MAIL AND I HAVE HIS CELL PHONE, AND INEVITABLY, I CATCH HIM WHEN HE'S PICKING HIS KIDS UP OR HE'S IN A STORE OR SOMETHING AND THERE'S THE THREE-HOUR TIME GAP.

ANYWAY, I SPOKE TO HIM VERY BRIEFLY A COUPLE OF TIMES. I SAID, LOOK, WE HAVE TO GET THEM MORE DOCUMENTS.

THERE'S -- MR. KEEHN SENT ME THIS LETTER, WHAT ARE WE GOING TO DO? WE DISCUSSED IT REAL QUICKLY. AND FINALLY, THE TIME CAME WHERE HE ABSOLUTELY HAD TO FILE A RESPONSE, AND THAT'S WHEN I SENT THE E-MAIL TO MR. KEEHN SAYING, GIVE ME ANOTHER DAY OR TWO.

THE FOLLOWING DAY I SPOKE TO MR. LOPEZ AT GREAT LENGTHS. AND WE WENT THROUGH THE LETTER ONE BY ONE. AND I MEAN, THERE ISN'T ANYTHING ELSE WE CAN COME UP WITH. THERE ISN'T ANY OTHER DOCUMENTS EXCEPT THIS ISSUE WITH THE WIFE. THERE ISN'T ANY DOCUMENTS THAT HAVEN'T BEEN TURNED OVER. THERE ISN'T ANY, ANY MORE EXPLANATION OR, OR, MORE DETAILS THAT WE COULD GIVE, OTHER THAN REALLY REPEAT INFORMATION

THAT'S ON VARIOUS -- OF THE MANY STATEMENTS THAT HAVE BEEN  
TURNED OVER I BELIEVE MANY TIMES BY NOW.

BUT, ADDRESSING THE MOTION, THE MOTION HAS TWO PARTS. ONE  
IS GRANT THESE SANCTIONS, WHICH I, FRANKLY, BELIEVE HAS  
ALWAYS BEEN THE GOAL. AND THE SECOND IS THESE EVIDENTIARY  
SANCTIONS.

AS FAR AS THE SANCTIONS, THE \$4000. I JUST WANT TO SAY  
AGAIN, I JUST DON'T THINK THERE'S ANY OTHER DOCUMENTS THAT  
CAN BE TURNED OVER OTHER THAN MRS. LOPEZ'S DOCUMENTS,  
THERE ARE NO OTHER DOCUMENTS THAT CAN BE TURNED OVER THAT  
HAVEN'T ALREADY BEEN TURNED OVER.

I BROUGHT MR. LOPEZ'S FIRST DEPOSITION. IT'S  
240-SOMETHING PAGES. THIS IS WELL MORE THAN A YEAR AGO.  
THE REST OF THESE PAPERS ARE EXHIBITS. EVERY STATEMENT  
OF EVERY ONE OF HIS BILLS OF THE TWENTY OR SO CREDITORS  
ARE ALL CONSUMER DEBTS. THIS IS WELL MORE THAN A YEAR OLD.  
MR. KEEHN HAS SENT OUT SEVERAL SUBPOENAS. I'M ACTUALLY  
NOT SURE WHAT HE'S GOTTEN FROM THOSE. WE PROVIDED MORE  
DOCUMENTS TWICE IN THIS GO AROUND. IF MR. KEEHN REALLY  
WANTED TO GET MOVING WITH THIS, JUST TAKE THE DEPOSITION  
AGAIN. HE'S BEEN TELLING ME HE'S GOING TO TAKE THIS  
DEPOSITION. HE SOMEHOW CAN'T BECAUSE HE  
REALLY -- THERE'S SOME MAGICAL PIECE OF PAPER THAT I'M NOT  
CLEAR ABOUT THAT HE HASN'T GOTTEN YET; AND THEREFORE, HE  
CAN'T GO FORWARD. THAT'S JUST RIDICULOUS.  
WITH RESPECT TO THE DOCUMENTS IN MRS. LOPEZ'S POSSESSION,  
I'VE ACTUALLY NEVER MET MRS. LOPEZ. BUT I MEAN, MY WIFE

HAS A CHECKING ACCOUNT AND SHE CARRIES THE CHECKBOOK AROUND IN HER PURSE. AND I'D BE LOOKING FOR A DIVORCE ATTORNEY IF I WENT INTO HER PURSE AND FOUND HER CHECKBOOK AND STARTED SENDING OFF INFORMATION SOMEBODY HAPPENED TO BE SUING ME.

THE COURT: SO YOU'RE CONTENDING THIS IS ALL SEPARATE PROPERTY, AND HE HAS NO INTEREST WHATSOEVER IN THE FUNDS THAT SHE ADMINISTERS OR THE DEBT SHE'S INCURRED WHETHER IT'S A LEHMAN BROTHERS, OR THE MORTGAGE ON THE HOUSE OR ANY OF THOSE KINDS OF THINGS?

MR. HAYES: I DON'T KNOW IF I'D GET INTO WHETHER IT'S COMMUNITY PROPERTY OR NOT. BUT IF THEY WANT, I MEAN, THEY CAN GO AFTER HER. THEY CAN SUBPOENA HER OR THEY CAN COME IN WITH SOME SORT OF EVIDENCE OF WHY THEY HAVE THE RIGHT TO MAKE MR. LOPEZ --

THE COURT: SO WHAT'S YOUR THEORY, WHAT'S YOUR THEORY ON WHY SHE DOESN'T HAVE TO PROVIDE AN ANSWER WITH RESPECT TO WHAT SHE HAS OR HOLDS OR PAYS, PARTICULARLY, IF HE'S GOT SOME OBLIGATION OR LIABILITY ON IT?

MR. HAYES. THEY HAVEN'T ASKED HER. THEY'RE ASKING HIM.

THE COURT: NO. THAT'S NOT MY QUESTION. MY QUESTION IS, WHAT'S YOUR THEORY FOR WHY HE DOESN'T HAVE TO ANSWER THAT QUESTION?

MR. HAYES: THAT'S HER RIGHT TO PRIVACY.

THE COURT: SO IT'S HER RIGHT TO PRIVACY, BECAUSE IT'S SOME SEPARATE INTEREST OF HERS OR WHAT?

WHERE DOES SHE HAVE A RIGHT TO PRIVACY ON SOMETHING THAT

YOU SAY YOU DON'T GET TO THE COMMUNITY PROPERTY QUESTION. I MEAN, HE'S GOT A COMMUNITY PROPERTY INTEREST IN IT, IF HE'S GOT A STATE STATUTORY RIGHT TO CO-MANAGEMENT OF COMMUNITY ASSETS OR ANYTHING ELSE THAT I HAVE NO IDEA WHAT FLORIDA LAW PROVIDES.

I'M ASKING YOU WHAT YOUR THEORY IS FOR WHY HE DOESN'T HAVE TO ANSWER IT?

MR. HAYES: WELL, FOR ONE THING, FLORIDA IS NOT COMMUNITY PROPERTY. AND I DON'T KNOW HOW FLORIDA LAW IS. BUT WHAT I FOCUSED ON IS MR. LOPEZ, GO TO YOUR WIFE AND GET THESE DOCUMENTS.

THE COURT: NO, POSSESSION -- YOU KNOW, WHAT DOES HE HAVE IN HIS POSSESSION OR CONTROL? WHAT DOES HE HAVE? HAS HE PRODUCED EVERYTHING THAT'S IN HIS POSSESSION OR CONTROL WITH RESPECT TO THAT?

MR. HAYES: OH, ABSOLUTELY. BUT THAT'S --

THE COURT: AND THAT'S INCLUDING AS TO HIS LIABILITY WITH RESPECT TO IT?

MR. HAYES: YES. AS FAR AS I KNOW. BUT THAT DOES RAISE THE QUESTION OF DOES -- IS WHAT'S IN HIS WIFE'S PURSE IN HIS POSSESSION OR CONTROL? I MEAN, THAT'S WHAT HE'S TELLING ME. I CAN'T --

THE COURT: NO. YOUR ANSWER IS, HE HAS NO INTEREST OR OBLIGATION IN THE LEHMAN BROTHERS OR THE MORTGAGE OR WHATEVER IT IS, THEN WHY DON'T YOU AGREE TO THOSE EVIDENTIARY SANCTIONS AS WELL? YOU SAY HE'S TURNED OVER EVERYTHING.

MR. HAYES: WELL, EVERYTHING THAT'S IN HIS POSSESSION OR HIS CONTROL WITHOUT GETTING DIVORCED; YES.

THE COURT: THEN THE ANSWER, IT SEEMS TO ME, IS THAT YOU AGREE TO THE EVIDENTIARY SANCTIONS, SAID THAT HE CANNOT PRODUCE ANYTHING HE HAS NOT ALREADY PRODUCED, COME TIME OF TRIAL WITH RESPECT TO THE ISSUE THAT WE'LL BE LITIGATING IN THIS PHASE 2 OF THIS ISSUE.

MR. HAYES: I MIGHT DO THAT. I HADN'T THOUGHT OF IT, MYSELF.

I WAS FOCUSING ON THE MOTION, WHICH BASICALLY ASKED YOU TO GRANT SUMMARY JUDGMENT TODAY. BUT I WOULD AGREE WITH THE THEORY THAT THINGS -- HE SHOULDN'T BE ABLE TO COME IN WITH SOMETHING AFTER THIS, OR HE SHOULDN'T BE ABLE TO, "QUOTE," "UNQUOTE," FIND SOMETHING, YOU KNOW, TWO DAYS BEFORE TRIAL.

AND I DO BELIEVE EVERYTHING'S BEEN TURNED OVER.

THE COURT: WELL, THAT'S WHAT MR. KEEHN IS -- I HAVE NO IDEA WHAT HIS STRATEGY IS, BUT THAT'S AT LEAST WHAT HE'S ASKING FOR IN THE CONTEXT OF THIS MOTION, BECAUSE HE WANTS TO BE ABLE TO CLOSE THE BOOK AND THEN GO TAKE YOUR CLIENT'S DEPO KNOWING THAT YOUR CLIENT IS NOW PRECLUDED FROM STEPPING UP AND SAYING OH, BUT HERE'S THIS, AND HERE'S THIS AND HERE'S THAT; AND NOT EVER HAVING HAD A CHANCE TO LOOK AT IT OR INDEPENDENTLY VALIDATE IT FROM THIRD PARTIES OR ANY OF THOSE KINDS OF THINGS.

YOU WOULDN'T WALK INTO A DEPO BLIND THAT WAY. I'M CONFIDENT OF THAT.

MR. HAYES: NO. YOU KNOW, WHAT I WAS FOCUSING ON IS THE MOTION SAYS ELIMINATE ALL EVIDENCE ENTIRELY REGARDING EACH ONE OF THESE CATEGORIES; NOT JUST ELIMINATE -- NOT JUST HAVE AN EVIDENTIARY SANCTION THAT WE CAN'T FIND, "QUOTE," "UNQUOTE," FIND MORE DOCUMENTS.

I THINK I WOULD AGREE TO THAT. WHATEVER DOCUMENTS HAVEN'T BEEN TURNED OVER UP TO NOW, I WOULD AGREE TO THAT.

THE COURT: OKAY.

MR. HAYES: I'M NOT SURE I -- YOU KNOW, HE JUST FOUND A JOB AND HE DOESN'T HAVE \$4,400. AND I DON'T KNOW WHAT ELSE I CAN SAY.

YOU SAID, YOU'RE NOT SURE WHAT MR. KEEHN'S STRATEGY IS. I MEAN, IF THEY REALLY WANTED THIS CASE TO BE FINISHED, THEY WOULD HAVE TAKEN HIS DEPOSITION SIX OR EIGHT MONTHS AGO.

THE COURT: I WOULDN'T HAVE. I WAS A LITIGATOR FOR A BUNCH OF YEARS. I'M NOT WALKING INTO A DEPOSITION WHEN THERE'S A WHOLE BUNCH OF DOCUMENTS OUT THERE AND HAVE THEM SURPRISE ME.

MR. HAYES: WELL, I DON'T THINK THERE ARE.

THE COURT: WELL --

MR. HAYES: FOR MONTHS THERE HAVEN'T BEEN A WHOLE BUNCH OF DOCUMENTS OUT THERE, BUT ALL RIGHT, I HAVE NOTHING FURTHER.

THE COURT: OKAY. MR. KEEHN.

MR. KEEHN: YES. THANK YOU, YOUR HONOR.

IN ADDITION TO THE REASONS THAT YOU'VE ALLUDED TO AS TO

WHY YOU WOULDN'T TAKE THE DEPOSITION WITHOUT THE DOCUMENTS, THERE WERE RESPONSES THAT MR. LOPEZ GAVE IN HIS ORIGINAL DEPOSITION A YEAR AGO, NOW, THAT TO THE EFFECT THAT, WELL THERE ARE MORE DOCUMENTS. I JUST HAVE TO LOOK AT THEM. AND OBVIOUSLY THAT'S A DOOR WE NEED TO CLOSE. IF WE GET THE EVIDENTIARY SANCTIONS, AS MR. HAYES SUGGESTED, WE'VE CLOSED THE DOOR.

AND I, IN TERMS OF THE -- IF HE'S AGREEING TO THE SANCTIONS THEN I DON'T NEED TO ADDRESS HOW HELLACIOUS THIS ARGUMENT OF MARITAL STRESS IS CONCERNED. I DID HAVE SOME DOCUMENTS THAT WERE RECENTLY FILED IN THE DISTRICT COURT THAT BLOW THAT OUT OF THE WATER. BUT IF HE'S AGREEING TO IT, I WON'T ADDRESS IT.

AS FAR AS THE MONETARY SANCTION IS CONCERNED, YOUR HONOR, THIS -- WE TRIED TO CLOSE THE DOOR IN A PROCESS THAT BEGAN SEVEN MONTHS AGO. I SHOULDN'T BE HERE SEVEN MONTHS LATER CLOSING IT ON A CAPITULATION TO A SECOND MOTION TO COMPEL THAT I SHOULDN'T HAVE HAD TO FILE.

IF THERE REALLY ARE NO DOCUMENTS, THEN WHY IS THE RESPONSE, WELL, THERE'S MORE THINGS I NEED TO CHECK AND I CAN'T BE SURE. IF THERE REALLY ARE NO DOCUMENTS, THEN WHY WAS THAT ANSWER NOT GIVEN BACK IN MAY? WHY WAS IT NOT GIVEN BACK IN DECEMBER WHEN IT WOULD HAVE BEEN TIMELY? THERE'S NO EXPLANATION FOR THAT.

THIS IS EXACTLY THE KIND OF GAMESMANSHIP THAT RULE ONE OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE ABHORS. THE PURPOSE OF THE RULES, THEMSELVES, IS TO PROVIDE A

MECHANISM AND A FRAMEWORK FOR THE RAPID AND FAIR  
RESOLUTION OF ISSUES.

NOW, ONE COMMENT, SORT OF, AT LEAST I INFERRED THE ARGUMENT  
FROM THE FACT THAT WE HAVE TWO TO THREE INCHES OF PAPER  
FROM THE ORIGINAL DEPOSITION. AND WHY ARE WE STILL HERE  
A YEAR LATER?

IN ADDITION TO NOT HAVING THE DOCUMENTS PRODUCED, WE ALSO  
HAVE THE POINT THAT THIS CASE WAS BIFURCATED AT MR. LOPEZ'S  
REQUEST. THERE WERE MANY QUESTIONS THAT I COULD EASILY  
HAVE ASKED THE FIRST GO AROUND THAT MIGHT HAVE OBIATED  
THE NEED FOR FURTHER DEPOSITION, OR AT LEAST REDUCED IT.  
I COULDN'T BECAUSE OF THE CONSTRAINTS PLACED BY THE  
BIFURCATION ORDER. AND I TRIED TO ADHERE TO THAT ORDER.  
SO I HAVE TO TAKE HIS DEPOSITION YET A SECOND TIME.  
AND THEN ONE OF THE LAST REMARKS THAT COUNSEL MADE, I  
THINK, UNDERSCORES THE NEED FOR THE SANCTIONS HAVING BEEN  
IMPOSED BECAUSE IT HIGHLIGHTS THE GAMESMAN-LIKE APPROACH  
THAT MR. LOPEZ HAS TAKEN. AND THAT, THAT COMMENT WAS, HE  
JUST GOT A JOB.

WELL, IF BY THAT HE'S REPRESENTING TO THE COURT THAT UP  
UNTIL THIS TIME HE'S BEEN UNEMPLOYED, I THINK THAT  
EXACERBATES THE CULPABILITY OF MR. LOPEZ IN NOT TIMELY  
RESPONDING. WHAT ELSE WAS HE DOING? WAS HE REALLY  
SPENDING FORTY HOURS A WEEK LOOKING FOR A JOB?

IF HE WAS UNEMPLOYED, CERTAINLY HE WOULD HAVE HAD MORE TIME  
AVAILABLE TO TEND TO HIS DUTIES AS A LITIGANT THAN A  
FULLY-EMPLOYED INDIVIDUAL WOULD. AND EVEN A



FULLY-EMPLOYED INDIVIDUAL IS EXPECTED TO RESPOND AND RESPOND TIMELY TO DISCOVERY OBLIGATIONS.

AS I SAID IN THE BEGINNING, WE DON'T KNOW TODAY, AND WE WON'T KNOW UNTIL THAT ORDER FOR RELIEF IS ENTERED AND SCHEDULES ARE FILED, IF THAT EVER HAPPENS. HOW MUCH THIS ESTATE AND THE GENERAL UNSECURED CREDITORS THAT BROUGHT THIS POSITION HAVE BEEN PREJUDICED BY THIS DELAY AND THE INCURRING OF GAP CLAIMS?

I THINK THAT MESSAGE THE COURT SENT THE FIRST TIME TO MR. LOPEZ WAS, I'LL GIVE YOU ANOTHER CHANCE. I THINK THE MESSAGE THAT THE COURT NEEDS TO SEND TO MR. LOPEZ NOW IS, THIS ISN'T A GAME. AND THERE AREN'T ANY MORE CHANCES. AND YOU DIDN'T PLAY BY THE RULES, AND SO THE SHIELD THAT I PUT IN FRONT OF YOU BEFORE, IS NOW DOWN. AND THESE SANCTIONS ARE DUE AND PAYABLE.

THE COURT: WELL, IN MY VIEW, AT LEAST AT THIS POINT IN TIME AND ON THE PRESENT STATE OF THE RECORD, THE EVIDENTIARY SANCTIONS ARE WARRANTED, AND WILL BE ORDERED IN THE FOLLOWING RESPECTS:

WITH RESPECT TO DEBTOR'S RESPONSE TO REQUEST FOR ADMISSION NUMBER FIVE, THAT WILL BE, AND THE DEBTOR HAS AGREED, THAT WILL BE AN UNQUALIFIED ADMISSION;

DEBTOR WILL BE PROHIBITED FROM PROVIDING EVIDENCE OF PAYMENTS FROM NOVION BETWEEN JANUARY 1 OF 2005 TO JULY 1 OF 2005;

DEBTOR WILL BE PROHIBITED FROM PROVIDING EVIDENCE OF PAYMENTS OF CASH RECEIVED FROM JANUARY 1, 2005 TO JULY 1,

2005;

DEBTOR WILL BE PROHIBITED FROM PROVIDING EVIDENCE OF PAYMENTS OF CASH RECEIVED BY HIS WIFE BETWEEN JANUARY 1, 2005 AND JULY 1 OF 2005. AND I WILL ADD, AS TO THESE PROHIBITIONS, THAT'S TO THE EXTENT NOT ALREADY DISCLOSED TO THE MOVING CREDITORS, THE PETITIONING CREDITORS. IF IT'S BEEN DISCLOSED, THEN IT'S THERE. THERE'S NO PRECLUSION OF USE OF THAT INFORMATION IF IT'S BEEN PREVIOUSLY PROVIDED TO THE PETITIONING CREDITORS, IN THE CONTEXT OF THE DISCOVERY OF THIS CASE;

THE DEBTOR WILL BE PROHIBITED FROM PROVIDING ANY EVIDENCE OF A DEBT IN FAVOR OF LEHMAN BROTHERS OR ANY PAYMENT TO LEHMAN BROTHERS AS OF THE PETITION DATE EXCEPT TO THE EXTENT AND SAME PROVISIO, EXCEPT TO THE EXTENT ALREADY DISCLOSED TO THE COUNSEL FOR PETITIONING CREDITORS; AND, DEBTOR WILL BE PROHIBITED FROM PROVIDING EVIDENCE OF DEBT IN FAVOR OF AMERICAN EXPRESS, BANK OF AMERICA, BANK CARD, CINGULAR, CITI CARD, HOUSEHOLD BANK, NORTHWEST FLORIDA DAILY NEWS, CITIBANK QUICKEN, TEXACO, VERIZON, UNION BANK, OR MR. GORRILL OR ANY PAYMENT TO ANY OF THEM AS OF THE PETITION DATE, EXCEPT TO THE EXTENT ALREADY PROVIDED THE COUNSEL FOR PETITIONING CREDITORS IN THE CONTEXT OF THE DISCOVERY IN THIS MATTER.

AS TO THE MONETARY SANCTIONS, I AM, AGAIN, GOING TO DEFER AWARDING THOSE. BUT THEY REMAIN THE SORT OF DAMOCLES OVER MR. LOPEZ. BECAUSE I DON'T KNOW THE ANSWER TO SOME OF MR. KEEHN'S SPECULATION AS TO WHAT'S GOING ON. MR. KEEHN

IS CONVINCED THAT THIS IS A GAME THAT MR. LOPEZ IS PLAYING.  
I'M NOT YET CONVINCED OF THAT.

SO EVENTUALLY WE WILL GET TO THE ANSWER ONE WAY OR THE  
OTHER. AND ONCE I KNOW THE ANSWER, I'LL APPLY THEM, IF  
I DEEM THAT'S APPROPRIATE AT THE TIME. BUT THE  
EVIDENTIARY SANCTIONS AT THIS POINT IN TIME ARE WARRANTED.  
I'LL SIGN AN ORDER TO THAT EFFECT.

MR. KEEHN: THANK YOU, YOUR HONOR.

THE COURT: OKAY. NOW, WE HAVE A STATUS CONFERENCE.  
TIMING.

ARE YOU, NOW, LOOKING AT THE DEPOSITION, MR. KEEHN?

MR. KEEHN: I AM. AND CONSISTENT WITH THE LOCAL  
RULES, I NEED TO CONFER WITH COUNSEL AS TO AVAILABLE DATES.

MR. HAYES: I HAVE TO BE BACK HERE JULY 31ST. THAT'S  
A LITTLE QUICK, BUT I'M GOING TO BE HERE ANYWAY.

THE COURT: JULY 31ST? THAT'S A TUESDAY.

MR. KEEHN: YES.

THE COURT: WHAT TIME IS YOUR HEARING ON THE 31ST?

MR. HAYES: AT 10:00. IT'S A SUMMARY JUDGMENT MOTION,  
SO IT COULD BE IN THE AFTERNOON; SUMMARY JUDGMENT MOTION  
THAT HASN'T BEEN FILED.

THE COURT: WE COULD DO 2:00 P.M. ON THE 31ST. DOES  
THAT WORK?

MR. KEEHN: IT'S CLEAR ON MY CALENDAR, YOUR HONOR.

MR. HAYES: 2:00?

THE COURT: OKAY. AND WE'LL DO THAT AS A FURTHER  
STATUS CONFERENCE. BUT IN THE MEANTIME, I ASSUME THE TWO

OF YOU WILL MEET AND CONFER ON A DEPOSITION DATE. AND THEN  
ONCE THE DEPOSITION IS CONCLUDED, I ASSUME MR. KEEHN,  
YOU'RE PLANNING A MOTION?

MR. KEEHN: I AM.

THE COURT: JUST SO MR. HAYES SEES WHAT'S COMING AND  
THEN WE'LL -- ONCE THAT MOTION'S DECIDED, WE'LL KNOW WHERE  
WE GO NEXT, IF ANYWHERE.

MR. HAYES: GREAT.

MR. KEEHN: THANK YOU, YOUR HONOR.

MR. HAYES: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT. WE'LL BE IN RECESS.

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

I, LYNETTE ALVES, OFFICIAL REPORTER, DO HEREBY  
CERTIFY:

THAT I REPORTED IN SHORTHAND THE PROCEEDINGS  
HELD IN THE FOREGOING CAUSE ON THE 25TH DAY OF JUNE, 2007;  
THAT MY NOTES WERE LATER TRANSCRIBED INTO TYPEWRITING  
UNDER MY DIRECTION; AND, THAT THE FOREGOING TRANSCRIPT  
CONTAINS A CORRECT STATEMENT OF THE PROCEEDINGS.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007.

---

LYNETTE ALVES, CSR #12534, RPR #61256

# EXHIBIT 3

0519

1 L. Scott Keehn, SBN 61691  
 2 Leslie F. Keehn, SBN 199153  
 3 KEEHN & ASSOCIATES  
 4 A Professional Corporation  
 402 West Broadway, Suite 1210  
 San Diego, California 92101  
 Telephone: (619) 400-2200

5 Attorneys for Petitioning Creditors

6  
 7  
 8 UNITED STATES BANKRUPTCY COURT  
 9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
 10

11 In Re:

12 FRANCIS J. LOPEZ,  
 13 Alleged Debtor.

Case No. 05-05926-PBINV

DECLARATION OF TIMOTHY P. DILLON

[BIFURCATED PHASE II]

Date: October 1, 2007 (Status Conference)

Time: 10:30 a.m.

Judge: The Honorable Peter W. Bowie

Ctrm: 4

14  
 15  
 16  
 17  
 18  
 19  
 20 I, TIMOTHY P. DILLON, declare as follows:

21 I. I am an attorney duly admitted to practice before the Courts of this State. I am a  
 22 shareholder of the law firm of Dillon & Gerardi, APC, counsel for Petitioning Creditor Alan  
 23 Stanly ("Stanly") in certain cases involving the alleged debtor herein, Francis J. Lopez ("Lopez"),  
 24 which were and/or are pending before the San Diego Superior Court and the United States District  
 25 Court for the Southern District of California (the "Additional Lopez Cases"). In connection with  
 26 the Additional Lopez Cases, I am the *shareholder in charge* of the engagement of the firm on  
 27 behalf of Stanly, and the attorney within the firm who is most knowledgeable with respect to all  
 28 aspects of the Additional Lopez Cases. I make this Declaration based upon facts within my

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1 firsthand knowledge acquired in the course of conducting litigation against Lopez in the  
2 Additional Lopez Cases.

3 2. The delay and bad-faith litigation tactics employed by Lopez and his counsel  
4 throughout the Additional Lopez Cases are summarized below.

5 *Union Bank of California v. Francis J. Lopez, et. al.*

6 San Diego Superior Court(Case No.: GIN 030827)

7 Case Summary (06/2003 - 09/2004):

8 3. In or about June of 2003, Union Bank of California initiated a litigation against  
9 both Lopez and Stanly as guarantors of a loan which their corporation, Prism, had defaulted on.  
10 Both Lopez and Stanly filed cross-claims against each other for contribution and indemnity.  
11 Lopez and Stanly eventually settled with Union Bank. Stanly prevailed on a motion for good faith  
12 settlement and obtained a dismissal of Lopez's cross-claims. At time of trial, the sole issues left in  
13 the case were Stanly's claims against Lopez for indemnity and contribution. Trial in the Union  
14 Bank matter was continued several times due to Lopez's dilatory conduct, as more fully set forth  
15 below. When the Court finally held trial, neither Lopez nor his counsel appeared. Trial proceeded  
16 without Lopez.

17 Summary of Dilatory / Bad Faith Tactics:

18 4. On March 9, 2004, Lopez requested a trial continuance due to the "illness of his  
19 wife's aunt." Based on that request, the parties ultimately stipulated to continue the trial for four  
20 months — until July 9, 2004.

21 5. On July 2, 2004 — the date of the trial readiness conference — Lopez's attorney,  
22 Joseph Fischbach ("Fischbach"), faxed a "Declaration re: Non-Readiness for Trial" to my office.  
23 A true and correct copy of that Declaration is attached hereto as Exhibit 1 to the "Compendium of  
24 Exhibits in Support of Renewed Request for an Enforcement Order Imposing Monetary Sanctions  
25 Against Alleged Debtor Francis J. Lopez" (hereinafter referred to as the "Exhibits Compendium")  
26 filed concurrently herewith. In his Declaration, Fischbach stated that he would be unable to  
27 appear for trial because he had scheduled another trial for July 7, 2004. This was the first time  
28 Fischbach had ever indicated that he would be unable to attend trial. He did not personally appear



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1 at the trial readiness conference. Instead, Fischbach sent an *appearance counsel* to the trial  
2 readiness conference who was not affiliated with Fischbach's law firm, and was unfamiliar with  
3 the case. Because a "Declaration for Non-Readiness for Trial" is not a proper method of obtaining  
4 a trial continuance, and Lopez did not properly apply for a continuance of trial, the Court had no  
5 legal basis on which to order a continuance. The Court then confirmed that trial call would  
6 remain set for July 9, 2004.

7 6. On July 9, 2004, Lopez and his counsel failed to appear for trial, and the trial court  
8 issued an Order to Show Cause as to why sanctions should not be issued against them. A true and  
9 correct copy of the Order is attached as Exhibit 2 to the Exhibits Compendium.

10 7. On July 16, 2004, Fischbach appeared before the Court and confirmed that he was  
11 in trial on another matter on the dates set for trial in *Union Bank of California v. Francis J. Lopez,*  
12 *et. al.* and stated that his failure to appear at the scheduled trial date was due to a mix-up with  
13 co-counsel. No declaration of co-counsel was ever provided to corroborate the existence of the  
14 mix-up or how it came to be. Additionally, Lopez provided declarations to the Court from himself  
15 and his physician stating Lopez was suffering from "diverticulitis" and was too ill to participate in  
16 a trial. A true and correct copy of the Declarations is attached as Exhibit 3 to the Exhibits  
17 Compendium. This was the first time the Court had been advised of Lopez's purported  
18 diverticulitis. Stanly was aware that Lopez could easily induce the aggravating symptoms of his  
19 condition by eating popcorn. The Court continued the trial for approximately 60 days — until  
20 September 10, 2004.

21 8. On September 9, 2004 — one day before the twice-continued trial was set to begin  
22 — Lopez applied *ex parte* for a third trial continuance. A true and correct copy of the Ex Parte  
23 Application is attached as Exhibit 4 to the Exhibits Compendium. Lopez claimed he was still  
24 suffering from diverticulitis, and that the medication he took for it made him "groggy."<sup>1</sup> Lopez  
25 further stated that he could not appear for trial due to scheduled colonoscopy and endoscopy  
26  
27  
28

<sup>1</sup> See, Exhibits Compendium Tab 4.

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procedures.<sup>2</sup> The evidence in support of Lopez's application was defective in that the declarations were not signed under penalty of perjury under the laws of the State of California. The Court ordered the application continued until September 10, 2004, and the Court's minute order provided precise instructions to Lopez as to how to provide a competent declaration. A true and correct copy of that Order is attached as Exhibit 5 to the Exhibits Compendium.

9. On September 10, 2004, Stanly appeared with a proposal for the commencement of trial. Lopez appeared through *appearance counsel* who was not affiliated with Fischbach's law firm, and was unfamiliar with the status of the case. Despite the Court's specific instruction, no competent declaration was provided to support Lopez's request for a third trial continuance. Based on that, the Court denied his request.

10. Trial proceeded on September 14, 2004, wherein Stanly obtained a judgment against Lopez for \$50,000.

*Francis Lopez v. Alan Stanly*

San Diego Superior Court (Case No.: GIN029692)

Case Summary (05/2003 - 06/2005):

11. This case has been stayed by the involuntary bankruptcy petition filed herein. Lopez initially sued Stanly for breach of fiduciary duty, trespassing, conversion and invasion of privacy. All but the invasion of privacy claims were dismissed via a motion for summary adjudication. Stanly counter-claimed on a variety of claims, including breach of fiduciary duty, unfair competition and misappropriation of trade secrets. Stanly obtained many discovery sanctions against Lopez for his discovery violations. Because of the involuntary bankruptcy petition, the Court did not issue monetary sanctions against Lopez. However, prior to the filing of the bankruptcy petition, a discovery referee recommended the issuance of several thousand dollars of discovery sanctions against Lopez, and \$5,198.75 of discovery sanctions were issued against Lopez's counsel and co-Plaintiff. The Court also issued evidentiary sanctions against Lopez.

///

*Id.*

1 Summary of Dilatory / Bad Faith Tactics:

2 12. Without justification or excuse, Lopez failed to provide any response to Stanly's  
3 First Set of written discovery propounded on him on December 31, 2003. Stanly filed a motion to  
4 compel discovery responses. During the extended meet and confer process, the parties worked out  
5 a resolution whereby Lopez paid Stanly \$600 in sanctions and provided Stanly with discovery  
6 responses. In exchange, Stanly took the motion off calendar.

7 13. On July 28, 2004, Stanly propounded a Second Set of written discovery consisting  
8 of interrogatories, requests for admission and requests for production on Martin Hudacko  
9 ("Hudacko") and Lopez. On September 2, 2004, Hudacko and Lopez provided responses  
10 consisting solely of identical boilerplate objections, without a single substantive response. After a  
11 meet and confer process, Lopez provided some substantive responses, however, these responses  
12 were still woefully inadequate. In addition, Lopez sought a protective order as to certain  
13 discovery (based on trade secret protection) and others he claimed he had already answered  
14 appropriately.

15 14. In November of 2004, Lopez moved to appoint a discovery referee. Stanly agreed,  
16 and Judge Sarokin was appointed as discovery referee based on the parties' stipulation.

17 15. On January 7, 2005, Stanly submitted to Judge Sarokin a motion to compel the  
18 discovery responses of Hudacko and Lopez. On February 18, 2005, Stanly's motion was granted,  
19 and Judge Sarokin ordered Lopez to respond to the written discovery requests and produce  
20 response documents. The 02/18/2005 ruling of Judge Sarokin was entered as an order of the trial  
21 court.

22 16. On March 4, 2005 (the ordered production date), Lopez failed, without justification  
23 or excuse, to comply with Judge Sarokin's 02/18/2005 Order by failing to provide any responsive  
24 documents to Stanly's requests for production of documents. Stanly made several requests to  
25 Judge Sarokin for an additional Order requiring Lopez to produce documents, and for the  
26 imposition of sanctions against Lopez. On March 24, 2005, Judge Sarokin issued another Order  
27 requiring Lopez to produce all responsive documents on or before March 18, 2005.

28 17. On April 1, 2005, after persistent requests from Stanly's attorneys, and two Orders

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1 from Judge Sarokin, Lopez finally produced approximately 50 pages of additional materials via  
2 email. Although Lopez provided some documents, he still failed, without justification or excuse,  
3 to provide a video tape and several documents specifically referred to in his discovery responses.  
4 Further, Lopez failed to provide audio recordings and a CD ROM purportedly in his possession.

5 18. On April 15, 2005, Stanly filed another motion to compel and request for monetary  
6 sanctions against Lopez, requesting, amongst other documents, that the audio recordings be  
7 produced. On April 28, 2005, Judge Sarokin granted Stanly's motion and demanded Lopez  
8 produce all responsive documents, including the audio recordings and the CD ROM.

9 19. After Judge Sarokin issued the 04/28/2005 Order, Lopez produced some audio  
10 recordings, but failed, without justification or excuse, to produce any of the other documents he  
11 had been ordered to produce.

12 20. After several repeated requests for production of the missing documentation, Stanly  
13 brought another motion to compel before Judge Sarokin. On June 24, 2005, Judge Sarokin  
14 granted the motion, and issued evidentiary and monetary sanctions against Lopez in the amount of  
15 \$2,000. A true and correct copy of that Order is attached as Exhibit 6 to the Exhibits  
16 Compendium.

17 21. On March 8, 2005, Lopez failed, without justification or excuse, to appear for the  
18 deposition of Stanly that Lopez had noticed for that day, causing Stanly and his counsel great  
19 expense and inconvenience.

20 22. Without justification or excuse, Lopez repeatedly served deposition subpoenas on  
21 third parties without providing notice of the Subpoenas to Stanly in an effort to secretly obtain  
22 discovery without Stanly's knowledge. Stanly was only made aware of Lopez' failure to provide  
23 notice of third party depositions after certain witnesses informed Stanly of the subpoenas. Judge  
24 Sarokin issued evidentiary sanctions against Lopez for this conduct in his 06/24/2005 Report.<sup>3</sup>

25 23. Pursuant to the terms of a protective Order issued by Judge Sarokin, and adopted  
26 by the trial court, all parties were ordered to provide declarations detailing their use of corporate  
27

28 <sup>3</sup> See, Exhibits Compendium Tab 6.

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1 funds for personal expenses. While Stanly complied with this request, Lopez did not. Lopez's  
2 declaration failed, without justification or excuse, to describe his use of corporate funds with any  
3 particularity. Stanly was forced to bring another motion before Judge Sarokin, requesting that  
4 supplemental declarations be ordered. In his 06/24/2005 Report, Judge Sarokin granted Stanly's  
5 motion and Ordered supplemental declarations be produced.<sup>4</sup>

6 24. Lopez refused to stipulate to limit his emotional distress claims pursuant to  
7 California Code of Civil Procedure §2032, despite Stanly's repeated requests and Lopez's  
8 representations that he would enter into a stipulation. Accordingly, Stanly moved for an Order  
9 requiring a medical examination of Lopez. Judge Sarokin issued sanctions against Lopez and his  
10 counsel in the amount of \$2,948.75 for their failure to initially stipulate. This ruling is contained  
11 in Judge Sarokin's 06/24/2005 Report.<sup>5</sup>

12 25. On October 22, 2004, Stanly served Lopez with a request for a Statement of  
13 Damages. Lopez never provided it, despite multiple follow-up requests. Judge Sarokin ordered  
14 the Statement served, and Lopez failed to comply with that Order, insisting that the Statement had  
15 already been served on Stanly. Judge Sarokin issued monetary sanctions in the amount of \$1,245  
16 against Lopez for his failure to comply with his Order. This ruling was also contained in Judge  
17 Sarokin's 06/24/2005 Report.<sup>6</sup>

18 *Enterprise Technology Holdings v. Noveon Systems, Inc. et al.*

19 United States District Court for the Southern District of California (Case No.: 05-cv-2236)

20 Case Summary (12/2005 - Present):

21 26. Stanly is the President of Enterprise Technology Holdings, Inc. ("ETH") which  
22 filed this action against Noveon Systems, Inc., a company whose common stock is all owned by  
23 Mrs. Lopez. ETH successfully obtained a preliminary injunction against Noveon, enjoining  
24 Noveon, and all those acting in concert with Noveon, from utilizing, selling, licensing or  
25

26 <sup>4</sup> See, Exhibits Compendium Tab 6.

27 <sup>5</sup> See, Exhibits Compendium Tab 6.

28 <sup>6</sup> See, Exhibits Compendium Tab 6.

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1 marketing Prism's software (the company formerly owned by Stanly and Lopez). Thereafter,  
2 without any proffered justification or excuse, Novcon simply stopped participating in the  
3 litigation. Noveon's counsel admitted his client was not participating in the litigation and, as a  
4 result, Noveon's counsel withdrew from the case on January 17, 2007. It appears Lopez decided  
5 to stop doing business as Noveon, and let the company take the fall in the case. Lopez left the  
6 company with no money, no assets and no appointed officers or elected directors.

7 Although all of the Noveon stock is in his wife's name, Lopez was the company's founder  
8 and the person who had managed all the day-to-day operations. The last remaining issue in this  
9 case is whether Lopez's wife is an alter-ego of Noveon and thus liable for the company's debts.

#### 10 Summary of Dillatory / Bad Faith Tactics:

11 27. In October of 2006, ETH propounded written discovery on Noveon. Noveon failed  
12 and refused to respond to the discovery requests even after multiple meet and confer attempts, and  
13 two telephonic conferences with Magistrate Judge Catherine Bencivengo.

14 28. ETH filed a motion for monetary, issue, evidentiary and terminating sanctions  
15 against Noveon based on its failure to provide any discovery responses. Noveon failed to oppose  
16 the motion. On December 8, 2007, Judge Bencivengo granted ETH's motion and ultimately  
17 issued evidentiary, issue and terminating sanctions.

18 29. On August 16, 2007, the Court granted ETH's motion for a default judgment  
19 against Noveon. A true and correct copy of that Order is attached as Exhibit 7 to the Exhibits  
20 Compendium.

#### 21 LOPEZ'S ALLEGATIONS OF UNFAIR BIAS

22 30. Lopez's apparent *modus operandi* in the Additional Lopez Cases was to allege  
23 unfair bias against the judicial officers who issued sanctions or adverse rulings against him.

24 31. In *Union Bank of California v. Francis J. Lopez, et. al.*, Lopez responded to Judge  
25 Sarokin's adverse rulings (described above) by failing to pay his portion of Judge Sarokin's  
26 referee fees, and filing a motion to disqualify him based on alleged bias. Based on Lopez's  
27 allegations, Judge Sarokin resigned rather than respond to the motion. Lopez also alleged that  
28 Judge Jacqueline Stern was biased against him. He filed a complaint against Judge Stern with the

1 judicial counsel, and unsuccessfully moved to disqualify her.

2 32. Likewise, in *Francis Lopez v. Alan Stanly*, Lopez responded to Judge Michael  
3 Orfield's adverse rulings by alleging he was unfairly biased against him, and moving for  
4 disqualification. Judge Orfield voluntarily recused himself, and the case was referred to Judge  
5 Thomas Nugent.

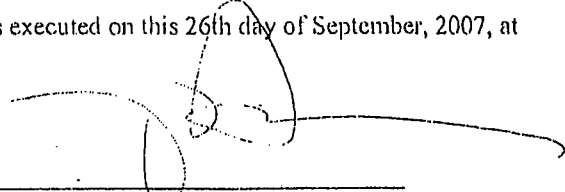
6 FEES INCURRED FOR PREPARING SUMMARIES RE: LOPEZ'S MISCONDUCT

7 33. The summaries of the Additional Lopez Cases discussed herein were specifically  
8 prepared for Stanly's bankruptcy counsel (Keehn & Associates, APC) by my office in support of  
9 Stanly's renewed request for monetary sanctions against Lopez in the above-entitled bankruptcy  
10 case. My office spent a total of 6.25 hours compiling the summaries, reviewing past documents,  
11 reviewing old case files and finalizing this declaration. Stanly was billed \$1,018.75 for actual  
12 legal fees incurred, as set forth below:

13 Attorney Timothy P. Dillon: 1.25 hour (\$215 per hour)

14 Attorney Sunjina Kaur Ahuja: 5.0 hours (\$150 per hour)

15 I declare under penalty of perjury under the law of the United States that the foregoing is  
16 true and correct, and that this Declaration was executed on this 26th day of September, 2007, at  
17 San Diego, California.

18  
19   
20 TIMOTHY P. DILLON  
21  
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27  
28

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# EXHIBIT 4



October 19, 2007  
4:25 pmKeehn & Associates, APC  
Detail Time Submittal Report

Page 1

Ref No	Date	Staff	Client and Matter	Hours	Rate	Amount
9317	8/1/2007 [Billed: 1896]	CKL	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	0.10	100.00	10.00
9345	8/3/2007 [Billed: 1896]	CKL	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	0.20	100.00	20.00
9356	8/6/2007 [Billed: 1896]	CKL	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	0.10	100.00	10.00
9431	8/23/2007 [Billed: 1896]	CKL	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	0.20	100.00	20.00
9956	9/2/2007 [Billed: 1934]	LSK	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) REVIEW OF WORLD SAVINGS DOCUMENTS IN PREPARATION FOR UPCOMING DEPOSITION.	0.80	320.00	256.00
9973	9/4/2007 [Billed: 1934]	LSK	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) WORK ON DOCUMENT REVIEW AND PREPARATION FOR UPCOMING DEPOSITION.	1.00	320.00	320.00
9991	9/5/2007 [Billed: 1934]	LSK	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) E-CORRESPONDENCE WITH CLIENT REGARDING VIDEO TAPE DEPOSITION.	0.10	320.00	32.00
9992	9/5/2007 [Billed: 1934]	LSK	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) WORK ON INITIAL PREPARATION FOR DEPOSITION OF FRANCIS LOPEZ.	1.10	320.00	352.00
10519	9/9/2007 [Billed: 1934]	LFK	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) WORKED IN SUPPORT OF DEPOSITION OF FRANCIS LOPEZ REGARDING OUTLINE AND SUMMARY OF EVIDENCE PERTAINING TO REQUISITE ELEMENTS OF CLAIM.	1.30	225.00	292.50

0530

October 19, 2007  
4:25 pmKeehn & Associates, APC  
Detail Time Submittal Report

Page 2

Ref No	Date	Staff	Client and Matter	Hours	Rate	Amount
10081	9/10/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) REVIEW OF DOCUMENTS AND RELATED PREPARATION FOR UPCOMING DEPOSITION	2.60	320.00	832.00
10082	9/10/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) RRR RECEIPT, REVIEW AND RESPOND TO E-CORRESPONDENCE FROM ATTORNEY HAYES GIVING NOTICE THAT LOPEZ WILL NOT ATTENDED HIS 9/11/07 DEPOSITION	0.20	320.00	64.00
10331	9/10/2007	CKL [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) PARALEGAL SUPPORT REGARDING ATTORNEY PREPARATION FOR UPCOMING DEPOSITION OF FRANCIS LOPEZ.	0.40	100.00	40.00
10333	9/10/2007	CKL [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) PARALEGAL SUPPORT REGARDING COMPILATION OF TAX DOCUMENTS PRODUCED BY LOPEZ.	0.40	100.00	40.00
10086	9/11/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) RR RECEIPT AND REVIEW OF E-CORRESPONDENCE FROM CLIENT REGARDING ISSUES WITH FRANCIS LOPEZ	0.20	320.00	64.00
10087	9/11/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) RR RECEIPT AND PRELIMINARY REVIEW OF MATERIALS FROM TIM DILLON'S OFFICE FOR USE IN SUPPORT OF SANCTIONS MOTIONS AGAINST LOPEZ	0.80	320.00	256.00
10088	9/11/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED] [REDACTED] [REDACTED]	0.80	320.00	256.00
10140	9/13/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED] [REDACTED] [REDACTED]	0.10	320.00	32.00
10141	9/13/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED] [REDACTED] [REDACTED]	0.10	320.00	32.00

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Ref No	Date	Staff	Client and Matter REQUEST.	Hours	Rate	Amount
10217	9/17/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	0.10	320.00	32.00
10218	9/17/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) ECO E-CORRESPONDENCE TO JOHN HAYES REGARDING DEPOSITION ISSUES	0.10	320.00	32.00
10351	9/17/2007	CKL [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	0.10	100.00	10.00
10553	9/18/2007	LFK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) REVIEWED SUMMARIES AND SUPPORTING DOCUMENTS PERTAINING TO LOPEZ'S DILATORY/BAD FAITH LITIGATION TACTICS PROVIDED BY THE OFFICES OF DILLON & GERARDI, APC; WORKED ON DRAFT OF COMPREHENSIVE SUMMARY OF LOPEZ'S DILATORY/BAD FAITH LITIGATION TACTICS IN SUPPORT OF PETITIONING CREDITORS' REQUEST FOR SANCTIONS; DRAFTED EMAIL CORRESPONDENCE TO ATTORNEY SUNJINA K. AHUJA IN SUPPORT OF SAME.	3.90	225.00	877.50
10240	9/19/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) TCW TELEPHONE CONFERENCE WITH ALAN STANLY REGARDING SANCTIONS MOTIONS AND RELATED ISSUES	0.40	320.00	128.00
10241	9/19/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) WORK ON PREPARATION FOR LOPEZ DEPOSITION AND GROUND WORK FOR SANCTIONS MOTION	1.70	320.00	544.00
10253	9/20/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) RRR RECEIPT, REVIEW AND RESPOND TO E-CORRESPONDENCE FROM ATTORNEY HAYES REGARDING DEPOSITION	0.20	320.00	64.00
10254	9/20/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) TCW TELEPHONE CONFERENCE WITH CLIENT REGARDING FOLLOW-UP RE: SANCTIONS AND	0.30	320.00	96.00

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Ref No	Date	Staff	Client and Matter RELATED ISSUES	Hours	Rate	Amount
10255	9/20/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) WORK ON DEVELOPMENT OF EVIDENTIARY RECORD FOR SANCTIONS HEARING	1.60	320.00	512.00
10574	9/20/2007	LFK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) RECEIVED AND REVIEWED EMAIL CORRESPONDENCE FROM ATTORNEY SUNJINA K. AHUJA REGARDING LOPEZ'S DILATORY/BAD FAITH LITIGATION TACTICS; COMPLETED DRAFT OF COMPREHENSIVE SUMMARY OF LOPEZ'S DILATORY/BAD FAITH LITIGATION TACTICS IN SUPPORT OF PETITIONING CREDITORS' RENEWED REQUEST FOR SANCTIONS.	1.30	225.00	292.50
10277	9/21/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) WORK ON EVIDENTIARY SUPPORT FOR SANCTIONS MOTIONS	1.30	320.00	416.00
10586	9/24/2007	LFK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) FINALIZED SUMMARY OF LOPEZ'S DILATORY/BAD FAITH LITIGATION TACTICS; DRAFTED CORRESPONDING COMPENDIUM OF EXHIBITS; DRAFTED DECLARATION OF TIMOTHY P. DILLON REGARDING LOPEZ'S DILATORY/BAD FAITH LITIGATION TACTICS.	6.60	225.00	1485.00
10403	9/25/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) REVISE AND EDIT PROPOSED DECLARATION FOR TIMOTHY DILLON	0.40	320.00	128.00
10404	9/25/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) RRR RECEIPT, REVIEW AND RESPOND TO E-CORRESPONDENCE FROM CLIENT RE: SAME	0.20	320.00	64.00
10405	9/25/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) WORK ON SANCTIONS MOTION	0.50	320.00	160.00
10588	9/25/2007	LFK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) FINALIZED COMPENDIUM OF EXHIBITS REGARDING LOPEZ'S DILATORY/BAD FAITH LITIGATION TACTICS; REVISED AND FINALIZED DECLARATION OF TIMOTHY P. DILLON REGARDING LOPEZ'S DILATORY/BAD FAITH LITIGATION TACTICS; DRAFTED DECLARATION OF L. SCOTT KEEHN REGARDING LOPEZ'S DILATORY/BAD FAITH LITIGATION TACTICS.	4.30	225.00	967.50

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10409	9/26/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) RRR RECEIPT, REVIEW AND RESPOND TO MULTIPLE E-CORRESPONDENCE REGARDING DECLARATIONS	0.20	320.00	64.00
10410	9/26/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED] [REDACTED] [REDACTED]	0.40	320.00	128.00
10591	9/26/2007	LFK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) REVIEWED EMAILS FROM ATTORNEY DILLON AND CLIENT; REVISED DILLON DECLARATION.	0.80	225.00	180.00
10440	9/27/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED] [REDACTED]	1.80	320.00	576.00
10441	9/27/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED] [REDACTED] [REDACTED]	0.30	320.00	96.00
10442	9/27/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED] [REDACTED]	0.30	320.00	96.00
10599	9/27/2007	LFK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) FINALIZED DECLARATION OF TIMOTHY P. DILLON REGARDING LOPEZ'S DILATORY/BAD FAITH LITIGATION TACTICS; WORKED IN SUPPORT OF FILING PETITIONING CREDITORS' RENEWED REQUEST FOR MONETARY SANCTIONS AGAINST LOPEZ.	0.30	225.00	67.50
10740	9/28/2007	LSK [Billed: 1934]	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) RECEIVE, REVIEW AND RESPOND TO E-CORRESPONDENCE FROM ATTORNEY HAYES REGARDING SANCTIONS ISSUE.	0.20	320.00	64.00
10868	10/1/2007	LSK	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED] [REDACTED] [REDACTED]	0.20	320.00	64.00

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10869	10/1/2007	LSK	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) WOF WORK ON FOLLOW-UP REGARDING SANCTIONS MOTION	0.20	320.00	64.00
10871	10/1/2007	LSK	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	0.90	320.00	288.00
10872	10/1/2007	LSK	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	1.00	320.00	320.00
10961	10/1/2007	LSK	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	1.00	320.00	320.00
10911	10/3/2007	LSK	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	0.10	320.00	32.00
10912	10/3/2007	LSK	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	0.10	320.00	32.00
10935	10/4/2007	LSK	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) WOF WORK ON FOLLOW-UP REGARDING PRESENTATION OF EVIDENTIARY MATERIALS IN SUPPORT OF SANCTIONS MOTION	0.90	320.00	288.00
10950	10/5/2007	LSK	05311001 MR. ALAN STANLY RE: INVOLUNTARY CHAPTER 7 PETITION (LOPEZ) [REDACTED]	0.10	320.00	32.00
Daily Total (Billable)				42.30		11448.50 **
Grand Total (Billable)				42.30		11448.50 **

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**EXHIBIT C**

0536

1 L. Scott Keehn, SBN 61691  
 2 Leslie F. Keehn, SBN 199153  
 3 KEEHN & ASSOCIATES  
 4 A Professional Corporation  
 5 402 West Broadway, Suite 1210  
 6 San Diego, California 92101  
 7 Telephone: (619) 400-2200  
 8 Attorneys for Petitioning Creditors

8 UNITED STATES BANKRUPTCY COURT  
 9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

11 In Re:

12 FRANCIS J. LOPEZ,  
 13 Alleged Debtor.

Case No. 05-05926-PBINV

DECLARATION OF TIMOTHY P. DILLON

[BIFURCATED PHASE II]

Date: October 1, 2007 (Status Conference)

Time: 10:30 a.m.

Judge: The Honorable Peter W. Bowie

Crtn: 4

20 I, TIMOTHY P. DILLON, declare as follows:

21 1. I am an attorney duly admitted to practice before the Courts of this State. I am a  
 22 shareholder of the law firm of Dillon & Gerardi, APC, counsel for Petitioning Creditor Alan  
 23 Stanly ("Stanly") in certain cases involving the alleged debtor herein, Francis J. Lopez ("Lopez"),  
 24 which were and/or are pending before the San Diego Superior Court and the United States District  
 25 Court for the Southern District of California (the "Additional Lopez Cases"). In connection with  
 26 the Additional Lopez Cases, I am the *shareholder in charge* of the engagement of the firm on  
 27 behalf of Stanly, and the attorney within the firm who is most knowledgeable with respect to all  
 28 aspects of the Additional Lopez Cases. I make this Declaration based upon facts within my

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1 firsthand knowledge acquired in the course of conducting litigation against Lopez in the  
2 Additional Lopez Cases.

3 2. The delay and bad-faith litigation tactics employed by Lopez and his counsel  
4 throughout the Additional Lopez Cases are summarized below.

5 *Union Bank of California v. Francis J. Lopez, et. al.*

6 San Diego Superior Court(Case No.: GIN 030827)

7 Case Summary (06/2003 - 09/2004):

8 3. In or about June of 2003, Union Bank of California initiated a litigation against  
9 both Lopez and Stanly as guarantors of a loan which their corporation, Prism, had defaulted on.  
10 Both Lopez and Stanly filed cross-claims against each other for contribution and indemnity.  
11 Lopez and Stanly eventually settled with Union Bank. Stanly prevailed on a motion for good faith  
12 settlement and obtained a dismissal of Lopez's cross-claims. At time of trial, the sole issues left in  
13 the case were Stanly's claims against Lopez for indemnity and contribution. Trial in the Union  
14 Bank matter was continued several times due to Lopez's dilatory conduct, as more fully set forth  
15 below. When the Court finally held trial, neither Lopez nor his counsel appeared. Trial proceeded  
16 without Lopez.

17 Summary of Dilatory / Bad Faith Tactics:

18 4. On March 9, 2004, Lopez requested a trial continuance due to the "illness of his  
19 wife's aunt." Based on that request, the parties ultimately stipulated to continue the trial for four  
20 months — until July 9, 2004.

21 5. On July 2, 2004 — the date of the trial readiness conference — Lopez's attorney,  
22 Joseph Fischbach ("Fischbach"), faxed a "Declaration re: Non-Readiness for Trial" to my office.  
23 A true and correct copy of that Declaration is attached hereto as Exhibit 1 to the "Compendium of  
24 Exhibits in Support of Renewed Request for an Enforcement Order Imposing Monetary Sanctions  
25 Against Alleged Debtor Francis J. Lopez" (hereinafter referred to as the "Exhibits Compendium")  
26 filed concurrently herewith. In his Declaration, Fischbach stated that he would be unable to  
27 appear for trial because he had scheduled another trial for July 7, 2004. This was the first time  
28 Fischbach had ever indicated that he would be unable to attend trial. He did not personally appear

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1 at the trial readiness conference. Instead, Fischbach sent an *appearance counsel* to the trial  
2 readiness conference who was not affiliated with Fischbach's law firm, and was unfamiliar with  
3 the case. Because a "Declaration for Non-Readiness for Trial" is not a proper method of obtaining  
4 a trial continuance, and Lopez did not properly apply for a continuance of trial, the Court had no  
5 legal basis on which to order a continuance. The Court then confirmed that trial call would  
6 remain set for July 9, 2004.

7 6. On July 9, 2004, Lopez and his counsel failed to appear for trial, and the trial court  
8 issued an Order to Show Cause as to why sanctions should not be issued against them. A true and  
9 correct copy of the Order is attached as Exhibit 2 to the Exhibits Compendium.

10 7. On July 16, 2004, Fischbach appeared before the Court and confirmed that he was  
11 in trial on another matter on the dates set for trial in *Union Bank of California v. Francis J. Lopez,*  
12 *et. al.* and stated that his failure to appear at the scheduled trial date was due to a mix-up with  
13 co-counsel. No declaration of co-counsel was ever provided to corroborate the existence of the  
14 mix-up or how it came to be. Additionally, Lopez provided declarations to the Court from himself  
15 and his physician stating Lopez was suffering from "diverticulitis" and was too ill to participate in  
16 a trial. A true and correct copy of the Declarations is attached as Exhibit 3 to the Exhibits  
17 Compendium. This was the first time the Court had been advised of Lopez's purported  
18 diverticulitis. Stanly was aware that Lopez could easily induce the aggravating symptoms of his  
19 condition by eating popcorn. The Court continued the trial for approximately 60 days — until  
20 September 10, 2004.

21 8. On September 9, 2004 — one day before the twice-continued trial was set to begin  
22 — Lopez applied *ex parte* for a third trial continuance. A true and correct copy of the Ex Parte  
23 Application is attached as Exhibit 4 to the Exhibits Compendium. Lopez claimed he was still  
24 suffering from diverticulitis, and that the medication he took for it made him "groggy." Lopez  
25 further stated that he could not appear for trial due to scheduled colonoscopy and endoscopy  
26  
27  
28

See, Exhibits Compendium Tab 4.

1 procedures.<sup>2</sup> The evidence in support of Lopez's application was defective in that the declarations  
 2 were not signed under penalty of perjury under the laws of the State of California. The Court  
 3 ordered the application continued until September 10, 2004, and the Court's minute order  
 4 provided precise instructions to Lopez as to how to provide a competent declaration. A true and  
 5 correct copy of that Order is attached as Exhibit 5 to the Exhibits Compendium.

6 9. On September 10, 2004, Stanly appeared with a proposal for the commencement of  
 7 trial. Lopez appeared through *appearance counsel* who was not affiliated with Fischbach's law  
 8 firm, and was unfamiliar with the status of the case. Despite the Court's specific instruction, no  
 9 competent declaration was provided to support Lopez's request for a third trial continuance.  
 10 Based on that, the Court denied his request.

11 10. Trial proceeded on September 14, 2004, wherein Stanly obtained a judgment  
 12 against Lopez for \$50,000.

13 *Francis Lopez v. Alan Stanly*

14 San Diego Superior Court (Case No.: GIN029692)

15 Case Summary (05/2003 - 06/2005):

16 11. This case has been stayed by the involuntary bankruptcy petition filed herein.  
 17 Lopez initially sued Stanly for breach of fiduciary duty, trespassing, conversion and invasion of  
 18 privacy. All but the invasion of privacy claims were dismissed via a motion for summary  
 19 adjudication. Stanly counter-claimed on a variety of claims, including breach of fiduciary duty,  
 20 unfair competition and misappropriation of trade secrets. Stanly obtained many discovery  
 21 sanctions against Lopez for his discovery violations. Because of the involuntary bankruptcy  
 22 petition, the Court did not issue monetary sanctions against Lopez. However, prior to the filing of  
 23 the bankruptcy petition, a discovery referee recommended the issuance of several thousand dollars  
 24 of discovery sanctions against Lopez, and \$5,198.75 of discovery sanctions were issued against  
 25 Lopez's counsel and co-Plaintiff. The Court also issued evidentiary sanctions against Lopez.

26 ///

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 28 

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 <sup>2</sup> *Id.*

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1 Summary of Dilatory / Bad Faith Tactics:

2 12. Without justification or excuse, Lopez failed to provide any response to Stanly's  
3 First Set of written discovery propounded on him on December 31, 2003. Stanly filed a motion to  
4 compel discovery responses. During the extended meet and confer process, the parties worked out  
5 a resolution whereby Lopez paid Stanly \$600 in sanctions and provided Stanly with discovery  
6 responses. In exchange, Stanly took the motion off calendar.

7 13. On July 28, 2004, Stanly propounded a Second Set of written discovery consisting  
8 of interrogatories, requests for admission and requests for production on Martin Hudacko  
9 ("Hudacko") and Lopez. On September 2, 2004, Hudacko and Lopez provided responses  
10 consisting solely of identical boilerplate objections, without a single substantive response. After a  
11 meet and confer process, Lopez provided some substantive responses, however, these responses  
12 were still woefully inadequate. In addition, Lopez sought a protective order as to certain  
13 discovery (based on trade secret protection) and others he claimed he had already answered  
14 appropriately.

15 14. In November of 2004, Lopez moved to appoint a discovery referee. Stanly agreed,  
16 and Judge Sarokin was appointed as discovery referee based on the parties' stipulation.

17 15. On January 7, 2005, Stanly submitted to Judge Sarokin a motion to compel the  
18 discovery responses of Hudacko and Lopez. On February 18, 2005, Stanly's motion was granted,  
19 and Judge Sarokin ordered Lopez to respond to the written discovery requests and produce  
20 response documents. The 02/18/2005 ruling of Judge Sarokin was entered as an order of the trial  
21 court.

22 16. On March 4, 2005 (the ordered production date), Lopez failed, without justification  
23 or excuse, to comply with Judge Sarokin's 02/18/2005 Order by failing to provide any responsive  
24 documents to Stanly's requests for production of documents. Stanly made several requests to  
25 Judge Sarokin for an additional Order requiring Lopez to produce documents, and for the  
26 imposition of sanctions against Lopez. On March 24, 2005, Judge Sarokin issued another Order  
27 requiring Lopez to produce all responsive documents on or before March 18, 2005.

28 17. On April 1, 2005, after persistent requests from Stanly's attorneys, and two Orders

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1 from Judge Sarokin, Lopez finally produced approximately 50 pages of additional materials via  
2 email. Although Lopez provided some documents, he still failed, without justification or excuse,  
3 to provide a video tape and several documents specifically referred to in his discovery responses.  
4 Further, Lopez failed to provide audio recordings and a CD ROM purportedly in his possession.

5 18. On April 15, 2005, Stanly filed another motion to compel and request for monetary  
6 sanctions against Lopez, requesting, amongst other documents, that the audio recordings be  
7 produced. On April 28, 2005, Judge Sarokin granted Stanly's motion and demanded Lopez  
8 produce all responsive documents, including the audio recordings and the CD ROM.

9 19. After Judge Sarokin issued the 04/28/2005 Order, Lopez produced some audio  
10 recordings, but failed, without justification or excuse, to produce any of the other documents he  
11 had been ordered to produce.

12 20. After several repeated requests for production of the missing documentation, Stanly  
13 brought another motion to compel before Judge Sarokin. On June 24, 2005, Judge Sarokin  
14 granted the motion, and issued evidentiary and monetary sanctions against Lopez in the amount of  
15 \$2,000. A true and correct copy of that Order is attached as Exhibit 6 to the Exhibits.  
16 Compendium.

17 21. On March 8, 2005, Lopez failed, without justification or excuse, to appear for the  
18 deposition of Stanly that Lopez had noticed for that day, causing Stanly and his counsel great  
19 expense and inconvenience.

20 22. Without justification or excuse, Lopez repeatedly served deposition subpoenas on  
21 third parties without providing notice of the Subpoenas to Stanly in an effort to secretly obtain  
22 discovery without Stanly's knowledge. Stanly was only made aware of Lopez' failure to provide  
23 notice of third party depositions after certain witnesses informed Stanly of the subpoenas. Judge  
24 Sarokin issued evidentiary sanctions against Lopez for this conduct in his 06/24/2005 Report.<sup>1</sup>

25 23. Pursuant to the terms of a protective Order issued by Judge Sarokin, and adopted  
26 by the trial court, all parties were ordered to provide declarations detailing their use of corporate  
27

28 <sup>1</sup> See, Exhibits Compendium Tab 6.

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1 funds for personal expenses. While Stanly complied with this request, Lopez did not. Lopez's  
2 declaration failed, without justification or excuse, to describe his use of corporate funds with any  
3 particularity. Stanly was forced to bring another motion before Judge Sarokin, requesting that  
4 supplemental declarations be ordered. In his 06/24/2005 Report, Judge Sarokin granted Stanly's  
5 motion and Ordered supplemental declarations be produced.<sup>4</sup>

6 24. Lopez refused to stipulate to limit his emotional distress claims pursuant to  
7 California Code of Civil Procedure §2032, despite Stanly's repeated requests and Lopez's  
8 representations that he would enter into a stipulation. Accordingly, Stanly moved for an Order  
9 requiring a medical examination of Lopez. Judge Sarokin issued sanctions against Lopez and his  
10 counsel in the amount of \$2,948.75 for their failure to initially stipulate. This ruling is contained  
11 in Judge Sarokin's 06/24/2005 Report.<sup>5</sup>

12 25. On October 22, 2004, Stanly served Lopez with a request for a Statement of  
13 Damages. Lopez never provided it, despite multiple follow-up requests. Judge Sarokin ordered  
14 the Statement served, and Lopez failed to comply with that Order, insisting that the Statement had  
15 already been served on Stanly. Judge Sarokin issued monetary sanctions in the amount of \$1,245  
16 against Lopez for his failure to comply with his Order. This ruling was also contained in Judge  
17 Sarokin's 06/24/2005 Report.<sup>6</sup>

18 *Enterprise Technology Holdings v. Noveon Systems, Inc. et al.*

19 United States District Court for the Southern District of California (Case No.: 05-cv-2236)

20 Case Summary (12/2005 - Present):

21 26. Stanly is the President of Enterprise Technology Holdings, Inc. ("ETH") which  
22 filed this action against Noveon Systems, Inc., a company whose common stock is all owned by  
23 Mrs. Lopez. ETH successfully obtained a preliminary injunction against Noveon, enjoining  
24 Noveon, and all those acting in concert with Noveon, from utilizing, selling, licensing or  
25

26 <sup>4</sup> See, Exhibits Compendium Tab 6.

27 <sup>5</sup> See, Exhibits Compendium Tab 6.

28 <sup>6</sup> See, Exhibits Compendium Tab 6.

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1 marketing Prism's software (the company formerly owned by Stanly and Lopez). Thereafter,  
2 without any proffered justification or excuse, Noveon simply stopped participating in the  
3 litigation. Noveon's counsel admitted his client was not participating in the litigation and, as a  
4 result, Noveon's counsel withdrew from the case on January 17, 2007. It appears Lopez decided  
5 to stop doing business as Noveon, and let the company take the fall in the case. Lopez left the  
6 company with no money, no assets and no appointed officers or elected directors.

7 Although all of the Noveon stock is in his wife's name, Lopez was the company's founder  
8 and the person who had managed all the day-to-day operations. The last remaining issue in this  
9 case is whether Lopez's wife is an alter-ego of Noveon and thus liable for the company's debts.

#### 10 Summary of Dilatory / Bad Faith Tactics:

11 27. In October of 2006, ETH propounded written discovery on Noveon. Noveon failed  
12 and refused to respond to the discovery requests even after multiple meet and confer attempts, and  
13 two telephonic conferences with Magistrate Judge Catherine Bencivengo.

14 28. ETH filed a motion for monetary, issue, evidentiary and terminating sanctions  
15 against Noveon based on its failure to provide any discovery responses. Noveon failed to oppose  
16 the motion. On December 8, 2007, Judge Bencivengo granted ETH's motion and ultimately  
17 issued evidentiary, issue and terminating sanctions.

18 29. On August 16, 2007, the Court granted ETH's motion for a default judgment  
19 against Noveon. A true and correct copy of that Order is attached as Exhibit 7 to the Exhibits  
20 Compendium.

#### 21 LOPEZ'S ALLEGATIONS OF UNFAIR BIAS

22 30. Lopez's apparent *modus operandi* in the Additional Lopez Cases was to allege  
23 unfair bias against the judicial officers who issued sanctions or adverse rulings against him.

24 31. In *Union Bank of California v. Francis J. Lopez, et. al.*, Lopez responded to Judge  
25 Sarokin's adverse rulings (described above) by failing to pay his portion of Judge Sarokin's  
26 referee fees, and filing a motion to disqualify him based on alleged bias. Based on Lopez's  
27 allegations, Judge Sarokin resigned rather than respond to the motion. Lopez also alleged that  
28 Judge Jacqueline Stern was biased against him. He filed a complaint against Judge Stern with the



1 judicial counsel, and unsuccessfully moved to disqualify her.

2 32. Likewise, in *Francis Lopez v. Alan Stanly*, Lopez responded to Judge Michael  
3 Orfield's adverse rulings by alleging he was unfairly biased against him, and moving for  
4 disqualification. Judge Orfield voluntarily recused himself, and the case was referred to Judge  
5 Thomas Nugent.

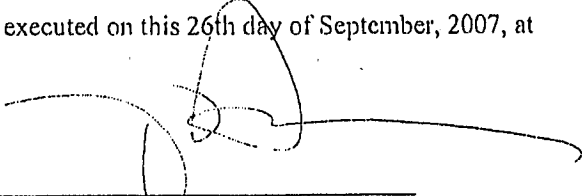
6 **FEES INCURRED FOR PREPARING SUMMARIES RE: LOPEZ'S MISCONDUCT**

7 33. The summaries of the Additional Lopez Cases discussed herein were specifically  
8 prepared for Stanly's bankruptcy counsel (Keehn & Associates, APC) by my office in support of  
9 Stanly's renewed request for monetary sanctions against Lopez in the above-entitled bankruptcy  
10 case. My office spent a total of 6.25 hours compiling the summaries, reviewing past documents,  
11 reviewing old case files and finalizing this declaration. Stanly was billed \$1,018.75 for actual  
12 legal fees incurred, as set forth below:

13 Attorney Timothy P. Dillon: 1.25 hour (\$215 per hour)

14 Attorney Sunjina Kaur Ahuja: 5.0 hours (\$150 per hour)

15 I declare under penalty of perjury under the law of the United States that the foregoing is  
16 true and correct, and that this Declaration was executed on this 26th day of September, 2007, at  
17 San Diego, California.

18   
19 \_\_\_\_\_  
20 TIMOTHY P. DILLON  
21  
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28

KEEHN & ASSOCIATES, APC  
ATTORNEYS AND COUNSELORS AT LAW  
402 WEST BROADWAY, SUITE 1210  
SAN DIEGO, CALIFORNIA 92101  
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Document 125

0546



1 M. Jonathan Hayes (Bar No. 90388)  
2 **Law Office of M. Jonathan Hayes**  
3 21800 Oxnard St, Suite 840  
4 Woodland Hills, CA 91367  
5 Telephone: (818) 710-3656  
6 Facsimile: (818) 710-3659  
7 jhayes@polarisnet.net

8 Attorneys for Alleged Debtor Francis Lopez

FILED AC

08 JAN 17 AM 10:35

CLERK  
U.S. BANKRUPTCY CT.  
SO. DIST. OF CALIF.

9 UNITED STATES BANKRUPTCY COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA  
11 SAN DIEGO DIVISION

12 In Re:

13 FRANCIS J. LOPEZ,

14 Alleged Debtor

CASE NO. 05-05926-PBINV

Involuntary Chapter 7.

15 **OPPOSITION OF ALLEGED DEBTOR**  
16 **TO MOTION FOR TERMINATING**  
17 **SANCTIONS; DECLARATION OF**  
18 **FRANCIS J. LOPEZ IN SUPPORT**  
19 **THEREOF**

Date: January 28, 2007

Time: 10:30 a.m.

Ctrm: 4

20 TO THE HONORABLE PETER W. BOWIE, UNITED STATES BANKRUPTCY  
21 JUDGE, TO MOVANT PETITIONING CREDITOR ALAN STANLY:

22  
23 The Declaration of Francis Lopez attached hereto is in response to the Motion for  
24 Terminating Sanctions filed by Mr. Keehn. The Motion is based on the failure of Mr.  
25 Lopez to pay sanctions to Mr. Keehn in the amount of \$8,130.50.

26 This is a case about an alleged Debtor who owns a home with his wife in Florida  
27 and virtually nothing else. The Petitioning Creditor has acknowledged that. The Alleged  
28

1 Debtor attempted to pay every creditor including Mr. Stanly more than a year ago which  
2 motion was opposed by Mr. Stanly. The Court was inundated with the bills and debts of  
3 Mr. Lopez at the previous Motion for Summary Judgment re the total number of creditors.  
4 The Court knows that there are very few creditors of this estate who are owed small  
5 amounts beyond Mr. Stanly.

6 Mr. Lopez prays that this court deny the motion to strike the Answer and set a trial  
7 date. Mr. Keehn, the attorney for the single petitioning creditor, has advised the court on  
8 more than one occasion that once the deposition of Mr. Lopez was complete, he would file  
9 a Motion for Summary Judgment as to Phase II. Mr. Lopez traveled to San Diego at his  
10 own cost without a court order requiring him to do so and appeared for his deposition on  
11 October 23, 2007. He answered the questions of Mr. Keehn for more than six hours. The  
12 long trail of this case is ready to finish. The Court should not allow it to be short-circuited  
13 by striking the Answer.

14 As to the Sanctions, Mr. Lopez, through counsel, offered on December 17, 2007 to  
15 pay \$4,000 of the sanctions immediately and \$1,000 per month for four months thereafter.  
16 See **Exhibit "A."** Mr. Keehn responded on December 20, 2007 with a resounding "no."  
17 That email communication is not attached because it contained other settlement discussion.

18 Terminating sanctions is an extreme remedy which should not be assessed except in  
19 extraordinary circumstances. Here Mr. Lopez has provided every document in his  
20 possession, responded to written discovery more than once, and attended his deposition  
21 twice. Nothing has been withheld; the most that has happened is that Mr. Lopez has  
22 perhaps been dilatory with some of his responses and in making preparations to attend his  
23 second deposition in San Diego. There was one Motion to Compel which was complied  
24 with. The Second Motion to Compel resulted in an Order of this court prohibiting Mr.  
25 Lopez from introducing any document as evidence that had not already been produced.  
26 There was no finding of the court that Mr. Lopez had in any way violated the Order from  
27 the first Motion to Compel. Counsel for Lopez agreed to the prohibitory order after  
28 explaining to the court that there were simply no further documents that were relevant that

1 could be produced. There is no discovery order that Mr. Lopez has failed to comply with.  
2 There was no order to appear for his deposition. Mr. Lopez voluntarily traveled to San  
3 Diego for the convenience of Mr. Keehn without a court order.

4 In *Wyle v. R.J Reynolds Industries, Inc.* 709 F.2d 585 (9<sup>th</sup> Cir. 1983), the court said,  
5 "courts have inherent power to dismiss an action when a party has willfully deceived the  
6 court and engaged in conduct utterly inconsistent with the orderly administration of  
7 justice." There is no deceit on behalf of Mr. Lopez. The *Wylie* court said, "[B]ecause  
8 dismissal is so harsh a penalty, it should be imposed only in extreme circumstances" citing  
9 *Raiford v. Pounds*, 640 F.2d 944,945 (9<sup>th</sup> Cir. 1981). "Sanctions interfering with a  
10 litigant's claim or defenses violate due process when imposed merely for punishment of an  
11 infraction that did not threaten to interfere with the rightful decision of the case." Citing  
12 *G-K Properties v. Redevelopment Agency*, 577 F.2d 645, 648 (9<sup>th</sup> Cir. 1978).

13 Mr. Keehn has received every document he has requested. He has taken two  
14 depositions over two full day periods. He has told the court he will file a Motion for  
15 Summary Judgment once the deposition is complete. The deposition is complete. Mr.  
16 Keehn has not suggested that Mr. Lopez refused to respond to any question asked or that  
17 the delay in flying to California of about five weeks resulted in any prejudice or harm to  
18 his ability to go through with his Motion for Summary Judgment.

19 The *Wylie* court "determined that the deliberate deception and the irreparable loss of  
20 material evidence justified the sanction of dismissal." There has been no deliberate  
21 deception and no loss of anything.

22 In *Matter of Visioneering Const.*, 661 F.2d 119, 123 (9<sup>th</sup> Cir. 1981), an involuntary  
23 petition case, the court struck the Answer. The court said, "[The alleged debtor's] near  
24 total refusal to facilitate discovery related to the jurisdictional factual issues and continued  
25 failure to respect discovery orders were therefore justifiably sanctioned by the entry of  
26 default." There has been no "near total refusal." Mr. Lopez has provided hundreds of  
27 pages of documents to Mr. Keehn.

28

1 Wherefore Alleged Debtor Francis Lopez prays that the court deny this motion,  
2 allow him to pay the sanctions in payments of \$4,000 immediately and \$1,000 per month  
3 and set a date to hear the Motion for Summary Judgment that Stanly has long promised to  
4 file.

5  
6  
7 Dated: January 14, 2008

Respectfully submitted

8  
9 By: 

10 M. Jonathan Hayes  
11 Attorney for Alleged Debtor Francis  
12 Lopez  
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**DECLARATION OF FRANCIS LOPEZ**

I, Francis Lopez, declare and state as follows:

1. I am the alleged debtor in this involuntary proceeding. I have personal knowledge of the facts stated herein, and if called as a witness, I could and would testify competently thereto.

2. I did not make the sanctions payment because I was unable to come up with the full amount of the sanctions in Mid-December. I authorized my attorney to offer to pay \$4,000 immediately and \$1,000 per month until paid.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Executed on this 14th day of January, 2008 at Destin, Florida.

By: 

Francis Lopez

**M. Jonathan Hayes**

---

**From:** "M. Jonathan Hayes" <jhayes@polarisnet.net>  
**To:** "L. Scott Keehn" <scottk@keehnlaw.com>  
**Sent:** Wednesday, December 19, 2007 11:05 AM  
**Subject:** Francis Lopez Sanctions

Mr. Keehn,

My client does not have the \$8,100 in sanction to pay now. He can pay you \$4,000 now and \$1,000 per month until paid. Let me know if that will work.

Thanks, Jon Hayes

M. Jonathan Hayes  
[jhayes@polarisnet.net](mailto:jhayes@polarisnet.net)  
21800 Oxnard St. Suite 840  
Woodland Hills, CA 91367  
(818) 710-3656  
(818) 710-3659 fax  
(818) 402-7537 cell  
[www.lawprofessorblogs.com](http://www.lawprofessorblogs.com)

If you have received this message in error, please call (818) 710-3656 and notify me of that fact and destroy all copies of this message."

Thank you.

0552

1/14/2008



**PROOF OF SERVICE**

I, MJ Hayes, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 21800 Oxnard St., Suite 840, Woodland Hills, CA 91367. On January 15, 2008, I served the within documents:

**OPPOSITION OF ALLEGED DEBTOR TO MOTION FOR TERMINATING SANCTIONS; DECLARATION OF FRANCIS J. LOPEZ IN SUPPORT THEREOF**

by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

X by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

.. by causing personal delivery by \_\_\_\_\_ of the document(s) listed above to the person(s) at the address(es) set forth below.

.. by placing the document(s) listed above in a sealed \_\_\_\_\_ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a \_\_\_\_\_ agent for delivery

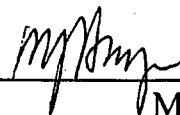
.. by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

L. Scott Keehn  
KEEHN & Assoc, APC  
402 W. Broadway, Suite 1210  
San Diego, CA 92101  
AND BY EMAIL

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on January 15, 2008, at Los Angeles, California.



MJ Hayes

Document 126

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